United States Court of Appeals

Fifth Circuit

No. 21,638.

LOIS CHAFFEE,
APPELLANT

vs.

PAUL B. JOHNSON, JR.,
individually and as Governor of the State of Mississippi, **ET AL,**
APPELLEES

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

Brief of Appellees

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 21,638

LOIS CHAFFEE, APPELLANT

VS.

PAUL B. JOHNSON, JR., individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT, APPELLEES

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INDEX

SUBJECT INDEX: Page

BRIEF OF APPELLEES, DEFENDANTS BELOW 1

PRELIMINARY STATEMENT 1

POINT I: IN CIVIL ACTIONS THE PRIVILEGE OF PROCEEDING IN FORMA PAUPERIS IS A MATTER WITHIN THE DISCRETION OF THE TRIAL COURT AND ONLY ALLOWED IN EXCEPTIONAL CIRCUMSTANCES WHERE THE APPEAL HAS MERIT. 10

POINT II: APPELLANT IS NOT ENTITLED TO HAVE THIS COURT ENJOIN A STATE CRIMINAL PROSECUTION OR TO ORDER THE DISTRICT COURT TO SO DO. A FEDERAL INJUNCTION TO STAY PROCEEDING IS AN EXTRAORDINARY REMEDY NEVER TO BE INDULGED IN EXCEPT IN A CASE CLEARLY DEMANDING IT AND EXCEPT WHERE THE FAILURE TO GRANT THE INJUNCTION WILL CAUSE IMMEDIATE AND IRREPARABLE INJURY AND WHERE THERE IS NO ADEQUATE REMEDY AT LAW. 26

CONCLUSION 51

CERTIFICATE 51

TABLE OF CASES:

Ackerman v. International Longshoremen's Union, 187 F.2d 800, cert. den. 342 U.S. 859, 96 L.ed. 646 38

Asheim v. Pigeon Hole Parking, Inc., 175 F.Supp. 320 47

Bailey v. Patterson, 368 U.S. 346, 7 L.ed.2d 332, 82 S.Ct. 282 34

Browder v. City of Montgomery, D.C. Ala., 146 F.Supp. 127 38

Caviness v. Somers, C.A. 4, 235 F.2d 455 16

Cleary v. Bolger, 371 U.S. 392, 9 L.ed.2d 390 34

Columbus & G. R. Co. v. Coleman, Miss., 160 So. 277 48

Coppedge v. United States, 369 U.S. 438, 8 L.ed.2d 21 21, 22

INDEX (Continued):
TABLE OF CASES (Continued): Page

Douglas v. Jeannette, 319 U.S. 157, 87 L.ed. 1324 32, 41

Ellis v. United States, 356 U.S.674, 2 L.ed.2d 1060 21
Ex parte Hawk, 321 U.S. 114, 88 L.ed. 572 39

Fletcher v. Young, C.A. 4, 222 F.2d 222, cert. den. 100 L.ed. 802 24

Galfas v. City of Atlanta, 193 F.2d 931 37
Gayle v. Browder, 142 F.Supp. 707, affirmed without opinion 352 U.S. 903, 1 L.ed.2d 114 28
Giordano v. Radio Corporation of America, C.A. 3, 183 F.2d 558 40
Goss v. State of Illinois, C.A. 7, 312 F.2d 257 31
Greene v. Fair, C.A. 5, 314 F.2d 200 7, 45

Harrison v. NAACP, 360 U.S. 167, 3 L.ed.2d 1152 38
Hawk v. Jones, C.A. 8, 160 F.2d 807 38
H. J. Heinz Company v. Owens, U.S.C.A. 9, 189 F.2d 505 30
Henderson v. Trailway Bus Company, 194 F.Supp. 423 Affirmed 10 L.ed.2d 1004, 374 U.S. 488 35

Jefferson v. Heinze, U.S.D.C. Calif., 201 F.Supp. 606 17
Jefferson v. United States, 277 F.2d 723, cert. den. 5 L.ed.2d 190 21
Jordan v. Hutcheson, 323 F.2d 597 44, 45

Kentucky v. Powers, 201 U.S. 1, 50 L.ed. 633 39
King v. Carmichael, 268 F.2d 305, cert. den. 4 L.ed.2d 548 22
Kremer v. Clarke, C.A. 6, 285 F.2d 735, cert. den. 6 L.ed.2d 243 25

Meccano v. Wanamaker, 253 U.S. 136, 64 L.ed. 822 43
Meiselman v. Paramount Films, C.A. 4, 180 F.2d 94 43
Mitchell v. Wright, D.C. Ala., 62 F.Supp. 580 40
Mooney v. Holohan, 294 U.S. 103, 79 L.ed. 791 39
Morrison v. Davis, 252 F.2d 102, affirmed 356 U.S. 968, 2 L.ed.2d 1075 28
Moss v. Thomas, 299 F.2d 729 21

NAACP v. Bennett, D.C. Ark., 178 F.Supp. 191 38

INDEX (Continued):

TABLE OF CASES (Continued): Page

Red Owl Stores v. Amalgamated Meat Cutters, Inc., 109 F.Supp. 629, appeal dismissed 205 F.2d 959 47
Reddix v. Lucky, C.A. 5, 252 F.2d 930 40
Reid v. Beto, U.S.D.C. Tex., 211 F.Supp. 162 15
Robinson v. Stevens, 249 F.2d 731, cert. den. 2 L.ed.2d 814 47
Smith & Son, Inc. v. Williams, U.S.C.A. 5, 275 F.2d 397 30
South Carolina Power v. South Carolina Commission, 286 U.S. 525, 76 L.ed. 268 43
Stefanelli v. Minard, 342 U.S. 117, 96 L.ed. 138 36

United States v. Corrick, 298 U.S. 435, 80 L.ed. 1263 43
United States v. Wood, 295 F.2d 772 44, 45

Warner Bros. Pictures v. Gittone, C.A. 3, 110 F.2d 292 43
Weller v. Dickson, C.A. 9, 314 F.2d 589 10
Westinghouse Elec. Corp. v. Free Sewing Mach. Co., C.A. 7, 256 F.2d 806 43

Yager v. Raisor, D.C. Ind., 211 F.Supp. 551 (1962) 19

OTHER AUTHORITIES:

Mississippi Code 1942, Recompiled:
  Section 2315 (Appendix "A", p. 53) 26
  Section 2479 (Appendix "B", p. 54) 3, 48

28 U.S.C.A.
  Section 753(f) 23
  Section 1651 7
  Section 1915 21, 22
  Section 2283 29, 31, 32, 44

42 U.S.C.A.
  Section 1971(c) 44
  Section 1983 31

Federal Rules of Civil Procedure
  Rule 43(a) 48
  Rule 43(e) 48

Federal Rules of Criminal Procedure
  Rule 39(a) 21

APPENDICES:

"A" Section 2315, Miss. 1942 Code 53
"B" Section 2479, Miss. 1942 Code 54

IN THE UNITED STATES COURT OF APPEALS
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LOIS CHAFFEE,	APPELLANT
VS.	NO. 21,638
PAUL B. JOHNSON, JR., ET AL	APPELLEES

BRIEF OF APPELLEES, DEFENDANTS BELOW

PRELIMINARY STATEMENT

On June 1st, 1964, an order was entered in Cause No. 3535 (J) (M) in the United States District Court for the Southern District of Mississippi, Jackson Division, denying to Appellant, Lois Chaffee, a temporary restraining order enjoining the Defendants from prosecuting a criminal action for perjury against Lois Chaffee pending in the Circuit Court of Hinds County, Mississippi.

No appeal has been perfected, but a notice of appeal has been filed in the District Court. Appellant has filed in this Court two independent motions: (1) A motion for prosecution of an appeal in forma pauperis; (2) A motion for the issuance of an injunction by this Court staying any further proceedings in the state court criminal action pending appeal or that a Writ of Mandamus issue directing the District Judge to issue such interlocutory or temporary injunction pending an appeal to this Court.

Neither motion, we submit, is well taken.

On June 13th, 1963, Appellant, Lois Chaffee, a white woman, was an employee of the Congress of Racial Equality and working for said organization in the City of Jackson. On that date she participated in a civil rights demonstration in Jackson. During this tumultuous demonstration the Appellant was arrested and charged with disorderly conduct in violation of a local ordinance of the City of Jackson.

Trial was held on this misdemeanor charge against Appellant on October 15th, 1963, and the Appellant was found guilty by jury of Hinds County. Defendant-Appellee Judge Moore presided over the County Court at that trial.

The issues of that trial are not before us, although Appellant has incorporated the entire record in that trial as a part of her bill in the U. S. District Court. This cause is now on appeal. The temporary injunction sought by Appellant at this time is not to stay any proceedings in the trial arising out of her civil rights demonstration, i.e. her misdemeanor charge, and whether or not she was guilty in that case, as found by the jury, is totally irrelevant.

However, during the progress of the trial before Judge Moore, with the Defendant Jack Travis acting as

Prosecutor, Plaintiff testified. After the jury returned its verdict the presiding judge, Judge Moore, ordered that there be submitted to the grand jury the question of whether or not the Appellant here had committed perjury in her testimony in that court. This the judge did by authority of a statute of the State of Mississippi, i.e. Section 2479 of the Mississippi 1942 Code, to the effect that whenever it appears to the Court that a sworn witness in a matter pending before the Court had testified "in such manner as to induce a reasonable presumption that he has wilfully and corruptly testified falsely to some material point or matter" that the Court could immediately commit such party to answer for an indictment for perjury. The entire text of Section 2479 is attached hereto as Appendix "B".

Pursuant to this Court order the issue of the guilt or innocence of Appellant of perjury during the misdemeanor case was submitted to the grand jury and the grand jury indicted Appellant for perjury. This trial which will be in the Circuit Court before Defendant Judge Hendrick, with Appellant prosecuted by District Attorney Waller and the Attorney General of the State, has not yet been had. It is this trial for perjury that Plaintiff-Appellant seeks to restrain. Whether or not the grand jury was justified in indicting her, or whether or not she was guilty of perjury, is not an issue in this case.

Appellant's allegations are that Defendant Moore and County Prosecuting Attorney Travis caused her to appear before the grand jury because she was a civil rights worker and with the intent to and purpose of intimidating her and others like her in civil rights work with the result that this prosecution would prevent Plaintiff and others from doing civil rights work.

After the indictment by the grand jury, Plaintiff filed a Complaint in the United States District Court for the Southern District of Mississippi praying for (1) a temporary restraining order restraining the prosecution of the perjury suit, (2) a permanent injunction restraining the Defendants from prosecuting the perjury suit, and (3) damages against the Defendants under the Civil Rights Act.

The basis of the Complaint is that the Defendants entered into a plan of conspiracy "involving all of them" and other persons unknown for the purpose of and with the intended effect to intimidate Plaintiff and punish her unjustly, and that the prosecution of the Plaintiff was undertaken by the Defendants-Appellees as a part of the conspiracy among the Defendants to deprive Plaintiff and other civil rights workers of their rights to expend their efforts to persuade and aid Negroes in exercising civil rights.

Any such conspiracy or intent or purpose was denied on the witness stand by each and every defendant. The existence of any such conspiracy is impossible on the face of the pleading. After Judge Moore ordered the investigation by the grand jury, each and every other defendant was under the duty to see that the jury considered the question and after the grand jury verdict each and every other defendant was under the duty to prosecute the trial. No prior arrangement or discussion or conspiracy of any kind was even suggested by the testimony. Plaintiff herself did not even testify.

Plaintiff's position is that she is not guilty of perjury but only testified to the truth, but that if she did testify untruthfully that it was on an immaterial point. These were questions left by the statute to the judicial determination of the trial judge, he being authorized by statute to order the investigation by the grand jury if she testified "in such manner as to induce a reasonable presumption that she (he) was wilfully and corruptly testifying falsely to some material point of matter..." The grand jury so found. If Judge Moore was in error and if the grand jury was in error, then she will be acquitted on the trial. There is not one iota of evidence in the record that she can not and will not secure a fair trial in the state court on the perjury charge.

There was not one iota of testimony as to any intent or plan or purpose on the part of any of the Defendants to intimidate or hinder Plaintiff in her civil rights work or to hinder any class of civil rights workers. In fact it is admitted by the Plaintiff that the testimony in the record is to the effect that in all the hundreds of civil rights misdemeanor cases that have been tried in Hinds County, Mississippi, that this is the first instance where any party or witness was charged with perjury, i.e. there was no pattern of conduct of so attempting to intimidate civil rights workers by any state officials.

Before Plaintiff-Appellant can be convicted, a second jury must find her guilty of perjury as a fact and a second judge must find her guilty of perjury on a material point as a matter of law. She then has an appeal to the Supreme Court of the State of Mississippi. If she is denied any constitutional rights in the Mississippi trial, she has an appeal to the Supreme Court of the United States.

There is no question of danger of her alleged right becoming moot. If this appeal is perfected, it would necessarily be determined in this Court long before her state litigation is concluded. Also, Appellees state to the Court that although they strenuously deny the Appellant's right to an injunction pending the appeal there is no intention on the part of any of the Appellees to set Appellant's criminal case for trial while this matter is under consideration by this Court. However, Appellees are urging that she has no right to a temporary or permanent injunction by the District Court and no grounds for a reversal by this Court of the finding of the lower court; that the Court below committed no reversible error in refusing the temporary injunction. The lack of right is so clear, we are submitting, that the Appellant's appeal has no merits and is in fact fictitious.

During the pendency of the trial of this case below Plaintiff-Appellant filed a motion to proceed in forma pauperis. After a full hearing this was denied by the Trial Judge. She has now filed an independent motion in this Court seeking an appeal in forma pauperis. We are submitting that there is no ground for reversal of the Trial Judge in the exercise of his discretion in denying this motion and that he was justified under the circumstances in exercising his discretion by so doing. Also the motion to proceed in forma pauperis was denied by the Trial Judge on the ground that her Complaint lacked merit. This being true, her appeal has no merit.

As stated, Appellant has filed an independent motion in this Court praying that this Court issue its own injunction restraining the proceedings of the state criminal proceeding pending appeal or issue a Writ of Mandamus ordering the Trial Judge so to do pending appeal to this Court.

This Court has, we submit, no jurisdiction to issue any such injunction. It is not justified under Section 1651 of 28 U.S.C.A. in that it is not an injunction necessary or appropriate in aid of the jurisdiction of this Court or agreeable to the usages and principles of law, and there is no justification for the exercise of any such extraordinary action.

In the case of Greene v. Fair, C.A. 5, 314 F.2d 200, one Greene had made application for admission to the

University of Mississippi and had been denied admission. The District Court had denied relief and had stayed his petition until he exhausted his administrative remedies. On the grounds of emergency he prayed this Court to grant him an order requiring his admission at the present term, prior to the docketing and hearing of his appeal in this Court. This Court in denying this relief pointed out that its jurisdiction was limited to a finding by it, which it did not make, that Defendant had violated a previous injunction in the Meredith case. This Court, in denying relief, used the following language:

> "The relief sought here is extraordinary relief. It is granted only in exceptional cases.
>
> "Upon oral argument, counsel for appellant conceded that it should be granted in this case only if, on the record presented before us, this Court should hold as a matter of law that the action of the Registrar constituted a violation of the Meredith injunction.
>
> "The reason for the sparing use of this power is apparent. Litigants are given the opportunity to try their cases in a district court and they are given an unlimited right of appeal to the Courts of Appeal. The rules of this Court make possible a prompt hearing of all regularly

> docketed appellate cases. The rules provide for accelerated hearings in cases in which cause therefor is shown. The vindication of private rights by litigation necessarily entails some delay....
>
> "Unless an appellant can demonstrate to the court on such an emergency motion as this that there is great likelihood, approaching near certainty, that he will prevail when his case finally comes to be heard on the merits, he does not meet the standard which all courts recognize must be reached to warrant the entering of an emergency order of this kind."

We will submit to the Court that there not only is no great likelihood, approaching near certainty, that Plaintiff will prevail when the appeal is perfected and is heard on its merits, but that on the other hand the lack of right of the Plaintiff to the relief sought on the merits is so clear and has been decided so many times by so many courts that the appeal is lacking in merit and is even frivolous, and that Plaintiff-Appellant should not be allowed to prosecute the appeal in forma pauperis.

POINT I

IN CIVIL ACTIONS THE PRIVILEGE OF PROCEEDING IN FORMA PAUPERIS IS A MATTER WITHIN THE DISCRETION OF THE TRIAL COURT AND ONLY ALLOWED IN EXCEPTIONAL CIRCUMSTANCES WHERE THE APPEAL HAS MERIT.

We submit that the District Judge did not abuse his discretion in denying Plaintiff's motion to be permitted to proceed in forma pauperis.

This action was filed by Plaintiff through attorneys not only in Mississippi but in New York without any suggestion that the Plaintiff was in need of financial assistance in prosecuting this litigation. During a hearing on the Plaintiff's motion before Judge Mize on April 20th, 1964, counsel for Plaintiff withdrew Plaintiff's motion to be permitted to proceed in forma pauperis but subsequently attempted to have it reinstated.

The only fact upon which Appellant seeks this relief is her own testimony that she is an employee of CORE and that her salary is only $9.64 per week, plus room and board. This is not pauperism. Moreover, there was no statement that the employer, CORE, did not feel responsibility for and assume the responsibility for legal expenses of its employees. Plaintiff, a former English teacher at Tougaloo College, had successfully made a Five Thousand Dollar appearance bond in an action pending against her in the Circuit Court of the First Judicial District of Hinds County, Mississippi. Plaintiff had subpoenaed and tendered checks to numerous witnesses to cover their witness fees and mileage incident to their appearance in a hearing in this action in Biloxi, Mississippi, on March 20th, 1964. Plaintiff relies for facts solely on affidavit of her attorney attached to her motion herein in the following limited language:

> "At the hearing in Jackson, Mississippi before the Honorable Sidney C. Mize on April 20, 1964, the plaintiff-appellant testified that she was without funds and without assets sufficient to pay costs and security herein and that she had no other monies to support her other than salary and emoluments coming from her employment which amounted to room and board and $9.64 per week."

The affidavit of Mr. Stennett, as attorney in this proceeding attached to the pleading of Appellees in this Court states: "That the evidence on said hearing showed that Plaintiff was a former English teacher at Tougaloo College, Tougaloo, Mississippi, and has recently made bond in the amount of $5,000.00 in a criminal proceeding against her in the state courts of Mississippi; that on or about March 19th, 1964, Plaintiff subpoenaed affiant and numerous other persons to appear as witnesses in a hearing on this action to be held in Biloxi, Mississippi, on March 20th, 1964, and delivered to affiant with said witness subpoena a check in the amount of $31.68...that affiant is advised and believes that numerous other witnesses were given similar checks by the Appellant in connection with said hearing."

The District Court's denial of Plaintiff's motion to be permitted to proceed in forma pauperis was fully justified by the evidence at the hearing and was also made after a full hearing on the merits of the motion for injunctive relief. The decision of the Judge was based upon two separate grounds: (1) "...the Court being of the opinion that she is able to pay the cost of appeal or give bond for same", and (2) "...the Court...being further _of the opinion that the appeal is without merit_."

This is a civil action under the Civil Rights Bill wherein Plaintiff not only seeks to obtain general injunctive relief but damages against the individual defendants. The allowance of any such motion by paid workers of such organizations as CORE and NAACP will disrupt the Federal Court procedure and will allow plaintiffs in such proceedings to impose undue financial burdens on state officers and the federal government. The District Court promptly denied Plaintiff's motion for leave to proceed in forma pauperis, and certainly did not abuse his discretion in so doing.

The applicable principles of law are:

(1) One seeking by petition to proceed on appeal in forma pauperis must prove that he or she is unable to pay costs or secure the same in any way or by any method

and the allowance of the petition is within the discretion of the Trial Judge.

Here, the District Judge exercised his discretion in denying the petition and made the statement: "I think the fair inference in this case is that the Plaintiff could pay court costs or give bond, as it is evident that her suit is being financed by CORE or some other organization and not by her. In addition thereto, since her employment furnishes her room and board and pays her a salary, I think she could advance the court costs."

(2) One seeking such privilege by petition must show unto the appellate court that her appeal has merit.

Appellant in her petition here for allowance to proceed on appeal in forma pauperis has not even alleged that the appeal has merit. In her original petition in the lower court during the pendency of the case she alleged that in the opinion of her attorney she was entitled to have the relief prayed for in the Complaint, based on an affidavit of the attorney filed with the Complaint; that in his opinion her cause of action had merit "upon such investigation of this matter as I have been able to make to date." Thereafter the Court denied the petition for a temporary injunction. This petition does not allege that the Trial Judge committed any error, or point out the errors to this Court, or again allege that the appeal has merit. That it does not have merit was specifically found by the Trial Judge. As we will later point out, this appeal lacks merit to such an extent as to be frivolous.

Cases substantiating the position of Appellees include:

In Weller v. Dickson, C.A. 9, 314 F.2d 598 the District Court had overruled plaintiffs' motions to be permitted to proceed in forma pauperis, and the Court of Appeals affirmed, stating:

> "Appellants have stated 'the privilege of proceeding in forma pauperis is a matter within the discretion of the trial court and in civil actions for damages should be allowed only in exceptional circumstances.' We agree with this statement and hold that in denying leave to proceed in forma pauperis the trial courts did not abuse their discretion."
>
> * * * *
>
> "In connection with forma pauperis proceedings these generalities need no citation, namely, the benefits are entirely statutory, they are granted as a privilege and not as a matter of right. The refusal to grant is not a violation of due process. The granting or refusing of such procedure is within the discretion of the District Court."
>
> * * * *

> "The Court in L. L. R. B. v. Gurnsey-Muskingum Elec. Co-op, 285 F.2d 8, 11 (6th Cir. 1960) pointed out that there is no exact measure of what constitutes an abuse of discretion, and it is more than the substitution of judgment of one tribunal for that of another, discretion being governed by situation and circumstances affecting each individual case, and even where an appellate court has power to review exercise of such discretion, inquiry is confined to whether such situation and circumstances clearly show an abuse of discretion, that is, arbitrary action not justifiable in view of such situation and circumstances." (Emphasis added.)

In determining whether to permit a party to proceed in forma pauperis, a court should consider the merits of the suit and deny the motion if the action lacks merit. In Reid v. Beto, U.S.D.C. Tex., 211 F.Supp. 162, the plaintiff contended that he was deprived of his constitutional right by being illegally held in custody by Texas officials. The plaintiff filed a motion to be permitted to proceed in forma pauperis. In pointing out that the Federal Court injunction suit was merely a device to avoid exhaustion of State Court remedies, the Court denied the motion to proceed in forma pauperis, and said:

> "The injunction he prays for would require the named defendant to refrain from enforcing the judgment rendered against him in the Jefferson County proceeding and release him from detention. In effect, the relief sought is exactly the same as that given to a successful applicant for the writ of habeas corpus. But under the theory urged, such relief would be available without the restraints on federal judicial action, such as the requirement of exhaustion of state remedies, that are thought desirable in this area of concurrent and therefore potentially conflicting jurisdiction. To allow the balance of federal-state relations to be upset in this way would not be in the best interests of justice. Other courts have recognized the power of this argument and have denied relief in similar situations.
>
> "For the several reasons stated, it is the opinion of the court that the complaint is without merit. Leave to file in forma pauperis is therefore denied."

In Caviness v. Somers, C.A. 4, 235 F.2d 455, the Court said:

> "This is an appeal from an order denying a petition by a prisoner to be allowed

to prosecute in forma pauperis an action for damages against a United States Marshal for alleged mistreatment while confined in a county jail. The petition to be allowed to proceed in forma pauperis was denied on the ground that there was 'no merit whatever in petitioner's alleged cause of action' and that 'the institution of the suit would be frivolous and utterly without merit.' The District Judge filed an opinion setting forth the facts which fully supported his action in denying the petition.

"Assuming without deciding that appeal lies from the denial of the petition, the matter was one committed by the statute to the discretion of the District Judge and there is no basis in the record before us for holding the discretion abused. See Taylor v. Steele, 8 Cir., 191 F.2d 852, and Higgins v. Steele, 8 Cir., 195 F.2d 366...." (Emphasis added.)

In Jefferson v. Heinze, U.S. D.C., Calif., 201 F.Supp. 606, the Court said:

"Plaintiff has submitted to this Court a 'Motion for leave to proceed in forma pauperis on petition for a Writ of Mandamus, and/or petition for a Writ of Habeas Corpus, * * *.' sought to be joined with a complaint for slander and conspiracy to violate the Federal Civil Rights Act (Title 42 U.S.C.A. Sec. 1981 et seq.). Plaintiff bases his proposed complaint on the alleged fact that, under prison regulations at Folsom State Prison, he, a Negro, was ordered separated from certain Caucasian friends, and was referred to as a 'Muslim.' In connection with plaintiff's allegation of racial discrimination against him is an allegation that he was transferred, with other Negro prisoners, to the Isolation Section of Soledad State Prison.

"Preliminarily, it should be noted that plaintiff can be permitted to proceed in forma pauperis only if his proposed proceeding has merit. Leave to proceed in forma pauperis is a privilege and not a right, and if this Court determines that the proposed proceeding is without merit, this Court is duty bound to forthwith deny leave to proceed in forma pauperis (Meek v. City of Sacramento, D.C., 132 F.Supp. 546).

"A fatal defect of plaintiff's proposed complaint is his failure to show that the asserted Federal rights, which he contends have been infringed, could not be preserved

> by proper proceedings in the State Courts. This Court must assume, and it does assume, until the contrary is made to affirmatively appear, that the courts of the State of California will do their duty and fully protect all of the legal rights secured to plaintiff under the Constitution and laws of the United States (Nichols v. McGee, D.C., 169 F.Supp. 721)." (Emphasis added.)

In the case of Yager v. Raisor, Sheriff of Jefferson County, Indiana, D.C. Ind., 211 F.Supp. 551 (1962), an action for alleged violation of plaintiff's civil rights, at the commencement of the action plaintiff was granted leave to proceed in forma pauperis. However, after the hearing and the dismissal of the action plaintiff filed a motion to appeal in forma pauperis. The Court denied this latter motion stating:

> "...such a motion is required to be accompanied by an affidavit which must state, in addition to the statement of lack of funds or security for costs, the 'nature of the * * * appeal and affiant's belief that he is entitled to redress.' 28 U.S.C. § 1915(a)... The requirement that the affidavit state the nature of the appeal requires that the affidavit state the alleged error or errors on the part

> *of the district court about which he complains, and failure to do so makes the affidavit insufficient to support the application to proceed in forma pauperis*. Bartlett v. Duty, 271 F.2d 264 (6th Cir., 1959). A petitioner is not entitled to appeal in forma pauperis unless it appears from the application that there is merit in his cause. ...It should be apparent from his application that some substantial question worthy of consideration is presented. Morris v. Igoe, 209 F.2d 108 (7th Cir., 1953). See also Kinney v. Plymouth Rock Squab Co., 236 U.S. 43, 35 S.Ct. 236, 59 L.Ed. 457 (1915)....And even if a ground is stated, if stated in such broad conclusionary form as to preclude a determination whether the appeal is frivolous or meritorious, the appeal must be dismissed for failure to comply with the statute. Holland v. Capital Transit Co., 87 U.S.App.D.C. 48, 184 F.2d 686, 689 (1950), cert. denied, 341 U.S. 954, 71 S.Ct. 1004, 95 L.Ed. 1375 (1951). *Plaintiff's petition wholly fails to state any alleged error or errors in the order of July 10, 1962*...." (Emphasis added.)

In Jefferson v. United States, 277 F.2d 723, cert. den. 5 L.ed.2d 190, the Court held that such a petitioner for appeal in forma pauperis must prove with "particularity, definiteness and certainty" not only that he lacks the financial ability to pay or give security for the appeal, but that he lacks ability "to arrange for someone else to raise sufficient funds".

Appellant does not deny that a determination of the necessity for appeal in forma pauperis was within the discretion of the Trial Judge.

However, Appellant does take the position that she is not under the necessity of showing the merit of the appeal but that the burden is upon the Appellees to prove that the appeal is frivolous and should be dismissed, relying on Ellis v. U. S., 356 U.S. 674, 2 L.ed.2d 1060, Coppedge v. U. S., 369 U.S. 438, 8 L.ed.2d 21.

The first case, the Ellis Case, merely held that in a criminal case where the convicted criminal is indigent that a petition to appeal in forma pauperis should be allowed unless the issues raised were so frivolous that the appeal would be dismissed under Federal Rules of Criminal Procedure 39(a). Thereafter some few courts presumed that because 28 U.S.C. 1915 applied to both civil and criminal cases, this decision was applicable to both civil and criminal decisions. Other courts of appeal disagree. Moss v. Thomas, 299 F.2d 729; King v. Carmichael, 268 F.2d 305, cert. den. 4 L.ed.2d 548.

However, the question was finally and definitely put to rest in the later case of Coppedge v. U. S., supra, where the Court came to the same conclusion but made it patent that it was a rule going beyond 28 U.S.C.A. 1915 and applicable only to criminal appeals. This is evident from the language of the Court, as follows:

> "In the context of a criminal appeal, we do not believe it can be read to require a District Court to determine whether the would-be appellant seeks further review of his case in subjective good faith,...We believe this interpretation of the statute is not required by reason nor is it consistent with the sound administration of criminal justice in the federal courts....
>
> * * * *
>
> "In so holding we have been impelled by considerations beyond the corners of 28 USC § 1915,...
>
> "Since our statutes and rules make an appeal in a criminal case a matter of right, the burden of showing that that right has been abused through the prosecution of frivolous litigation should,

> at all times, be on the party making the suggestion of frivolity....He is to be heard, as is any appellant in a criminal case, if he makes a rational argument on the law or facts. It is the burden of the Government, in opposing an attempted criminal appeal in forma pauperis, to show th that the appeal is lacking in merit,...
>
> "Two additional factors have relevance to our view of the proper disposition of motions for leave to perfect criminal appeals in forma pauperis. These factors are the foundation for Rule 39(d) of the Federal Rules of Criminal Procedure, specifying that preference shall be given by the Courts of Appeals to criminal cases...When society acts to deprive one of its members of his life, liberty or property, it takes its most awesome steps....
>
> "Both of these considerations are particularly pertinent to criminal appeals in forma pauperis...." (Emphasis added.)

Moreover, there is a statutory ground requiring the denial of the motion at least so far as the payment for the record is concerned. 28 U.S.C.A. 753(f) provides: "Fees for transcripts furnished in criminal or habeas corpus proceedings to persons allowed to sue, defend or appeal in forma pauperis shall be paid by the United States out of money appropriated for that purpose. Fees for transcripts furnished in other proceedings to persons permitted to appeal in forma pauperis shall also be paid by the United States if the trial judge or a circuit judge certifies that the appeal is not frivolous but presents a substantial question."

Under Point II of this brief we have cited to this Court at some length authorities which would show unquestionably not only that the Appellant's right to injunctive relief against the prosecution of state criminal proceeding is without merit, but that it is actually frivolous. We have done so far beyond the necessity in this case on the issue of the right to injunction against the state proceeding pending an appeal in this case and in view of the statement at the conclusion of the brief that Appellees will not prosecute the criminal proceeding pending any such appeal. We have done so to show the Court the frivolity of the appeal and, therefore, the lack of right in Appellant to prosecute the same in forma pauperis.

It is an established rule that an appeal is actually frivolous where the issue has been decided by other appellate courts in other cases.

See the case of Fletcher v. Young, C.A, 4, 222 F.2d 222, cert. den. 100 L.ed. 802. The Court held that an action in forma pauperis based on a claim which "had previously been decided against plaintiff in other cases" was "frivolous".

In the case of Kremer v. Clarke, C.A. 6, 285 F.2d 735, cert. den. 6 L.ed.2d 243, the Court held:

> "An appeal presenting issues previously adjudicated by an appellate court should be dismissed."

The Court in the opinion used the following language:

> "The granting of leave to appeal in forma pauperis is discretionary, Loum v. Underwood, 6 Cir., 262 F.2d 866;... We are likewise of the opinion that where an appeal presents issues that have been previously adjudicated by an appellate court, such appeal should be dismissed, In re Inland Gas Corp., 6 Cir., 217 F.2d 207."

We, therefore, call the attention of the Court to our position in Point II of this brief that not only this Court but the Supreme Court of the United States and all other Circuit Courts of Appeal have held that a federal court will not enjoin the prosecution of criminal action by a state court without a showing of inadequate remedy of law and irreparable injury and that neither of these are shown where it would be presumed that petitioner would receive a fair trial in the state court and the only injury is the necessity of the having of a hearing in the state court.

POINT II

APPELLANT IS NOT ENTITLED TO HAVE THIS COURT ENJOIN A STATE CRIMINAL PROSECUTION OR TO ORDER THE DISTRICT COURT TO SO DO. A FEDERAL INJUNCTION TO STAY A PENDING STATE CRIMINAL PROCEEDING IS AN EXTRAORDINARY REMEDY NEVER TO BE INDULGED IN EXCEPT IN A CASE CLEARLY DEMANDING IT AND EXCEPT WHERE THE FAILURE TO GRANT THE INJUNCTION WILL CAUSE IMMEDIATE AND IRREPARABLE INJURY AND WHERE THERE IS NO ADEQUATE REMEDY AT LAW.

There is now pending in the Circuit Court of Hinds County, Mississippi, a criminal action for perjury against Appellant, which said action has followed a grand jury finding of guilt. The crime of perjury is defined by Section 2315 of the Mississippi 1942 Code. A complete copy of said section is attached hereto as Appendix "A".

Appellant takes the position that she has two defenses to this prosecution, i.e. that the testimony on which the indictment rests was true and that if it was untrue, it was not on a material point. These positions have been determined against her both by the County Judge hearing the testimony and the grand jury.

Under the facts here Appellant is clearly not entitled to this extraordinary remedy. She has an adequate remedy at law by establishing in the criminal proceeding the above set out defenses, and even in case of conviction by the taking of an appeal to the Supreme Court of the State of Mississippi, and, if she has been denied any constitutional rights, by an appeal to the Supreme Court of the United States.* The only injury that Appellant will suffer by the failure of this Court to grant her the injunctive relief sought is the necessity of defending herself in a criminal case and under all the authorities this is not such injury as justifies a federal court in enjoining a state court prosecution.

There are present here none of the facts which courts occasionally hold justify an exception to the rule of unwillingness of a federal court to enjoin a state criminal prosecution:

There are here involved no cumulative severe penalties which would tend to prevent Appellant from relying on her remedy in the state court.

There are here involved no property rights and no property rights are threatened.

There is no allegation of proof here that she does not have a full opportunity to defend the criminal proceeding and in fact the Affidavit of her attorney attached to the Complaint is to the effect that he merely prefers to spend the time in prosecuting this proceeding rather than in defending the state action. There is no allegation or proof that the case has been set for trial. Her attorney states: "...In view of our belief that this proceeding is well-founded, I believe that it would be seriously prejudicial to the constitutional rights and best interests of my client...for me to divert my energies or the energies of those associated with me to preparation of the state court defense to the detriment of our efforts in this proceeding."

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* The issue would not be moot at the termination of an appeal in this cause even should the case in the Circuit Court proceed to judgment.

There is no allegation or proof that the proceedings before the grand jury were not legal and valid and properly conducted.

There is no proof or allegation that Appellant could not and would not have a fair trial in the state courts.

There is no suggestion that the patently valid perjury statute of the State of Mississippi is unconstitutional. This is an attempt to enjoin an actual pending criminal action in the state court, not to enjoin threatened enforcement of an unconstitutional statute*, where there might conceivably be injury because the plaintiffs are unable to perform acts which they have a constitutional right to perform because of the imminent danger of criminal prosecution.

No one has a constitutional right to commit perjury. In the criminal prosecution here involved there is merely a question of fact as to whether or not Appellant has violated a valid criminal law. Appellees deny the right on the ground that Appellant has an adequate remedy at law and no emergency exists and she will suffer no irreparable injury under all of the decisions by merely being required to defend the criminal action against her and will be thereby deprived of no constitutional rights.

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* As was involved in Gayle v. Browder, 142 F.Supp. 707, affirmed without opinion, 352 U.S. 903, 1 L.ed.2d 114; Morrison v. Davis, 252 F.2d 102, affirmed 356 U.S. 968, 2 L.ed. 2d 1075. Nor do Appellees seek to deny the right to injunctive relief on the ground of comity until the state courts have ruled on the constitutionality of the statute.

Under the circumstances here this Court has no jurisdiction to grant the injunction prayed for, such action being prohibited by 28 U. S. Code, Section 2283.

Section 2283 of Title 28, U. S. Code, specifically prohibits the issuance of the injunction sought in this case, and provides:

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

Here such injunctive relief is not expressly authorized by any Act of Congress, is not necessary in aid of the jurisdiction of the court below or this Court, or to protect or effectuate a judgment of the court below or this Court. The narrow exceptions to this statute do not include instances where the plaintiff has an adequate remedy at law and will not suffer immediate and irreparable injury.

In H. J. Heinz Company v. Owens, U.S.C.A. 9th, 189 F.2d 505, that Court said:

> "Section 2283 of Title 28 of the United States Code, the present codification of a statute originally enacted in 1793, expreeely deprives the courts of the United States of authority, subject to narrow exceptions not relevant here, to 'grant an injunction to stay proceedings in a State Court'. The Supreme Court has recently admonished that 'We must be scrupulous in our regard to the limits within which Congress (in Section 2283) has confined the authority of the courts of its own creation.' Toucey v. New York Life Ins. Co., 1941, 314 U.S. 118, 62 S.Ct. 139, 148, 86 L.Ed. 100."

In T. Smith & Son, Inc. v. Williams, U.S.C.A.5th, 275 F.2d 397, the Court held that this statute requires a strict interpretation in order to accomplish the results desired by its enactment, and said:

> "The hands-off doctrine expressed in Section 2283 is to be considered in the light of the function of Section 2283 as a pillar of federalism....
>
> "The phrase, 'where necessary in aid of its jurisdiction', therefore, should be interpreted narrowly, in the direction of

> federal non-interference with orderly state proceedings."

Nor does an alleged conspiracy in violation of or any alleged violations of the Civil Rights Acts suspend or modify 28 U.S.C., Section 2283, i.e. a violation of the Civil Rights Act does not authorize an exception to the prohibitions of 28 U.S.C. 2283. Section 1983 of 42 U.S.C. authorizes, in cases of violation of civil rights, a "suit in equity, or other proper proceedings for redress." But it does not expressly authorize an injunction of a state criminal proceeding not known to equity and not a proper proceeding in equity, i.e. it does not broaden the long-established equitable injunctive jurisdiction.

In Goss v. State of Illinois, C.A. 7, 312 F.2d 257, the plaintiff filed his complaint in the Federal Court seeking to enjoin a criminal action instituted against him in the state court. The District Court found the issues in favor of the plaintiff, but the Court of Appeals reversed and remanded with directions to dismiss the complaint, saying:

> "28 U.S.C. Sec. 2283 reads: 'Stay of State court proceedings. A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.'

> "Several decisions have pointed out that this section has not been modified nor is an exception engrafted thereon by the terms of the Civil Rights Act (42 U.S.C. Sec. 1981 et seq.) or the Declaratory Judgment Act (28 U.S.C. Sec. 2201 et seq.). H. J. Heinz Co. v. Owens, 9 Cir., 189 F.2d 505; Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293, 63 S.Ct. 1070, 87 L.Ed. 1407; Smith v. Village of Lansing, 7 Cir., 241 F.2d 856; Sexton v. Barry, 6 Cir., 233 F.2d 220.
>
> "Although we have heretofore held herein that the District Court had no jurisdiction of this cause, in any event, 28 U.S.C. Sec. 2283 would bar the assumption of jurisdiction. No act of Congress has authorized an exception to Sec. 2283 which would cover this case. There is no judgment of a federal court to be protected. The clause 'in aid of jurisdiction' has no application under the facts of this case."

However, even without the prohibition of 28 U.S.C. 2283, courts under the circumstances here consistently deny the right to enjoin a pending criminal procedure even in civil rights cases.

The leading case although not a civil rights case is Douglas v. Jeannette, 319 U.S. 157, 87 L.ed. 1324. There certain members of Jehovah's Witnesses had been arrested for soliciting and distributing religious literature under a municipal ordinance prohibiting solicitation without procuring a license from the City authorities. Plaintiff sought an injunction to restrain the City officials from prosecuting this action. The Court, in holding that they were not entitled to the relief, used the following language:

> "It is a familiar rule that courts of equity do not ordinarily restrain criminal prosecutions. No person is immune from prosecution in good faith for his alleged criminal acts. Its imminence, even though alleged to be in violation of constitutional guaranties, is not a ground for equity relief since the lawfulness or constitutionality of the statute or ordinance on which the prosecution is based may be determined as readily in the criminal case as in a suit for an injunction. Davis & F. Mfg. Co. v. Los Angeles, 189 US 207, 47 L ed 778, 23 S Ct 498; Fenner v. Boykin, 271 US 240, 70 L ed 927, 46 S Ct 492...."
>
> * * * *
>
> "...It does not appear from the record that petitioners have been threatened with any injury other than that incidental to every criminal proceeding brought lawfully and in good faith...."

In Bailey v. Patterson, 368 U.S. 346, 7 L.ed.2d 332, 82 S.Ct. 282, a Civil Rights action, the Court, on December 18, 1961, in a per curiam opinion, said:

> "A federal injunction to stay state criminal proceedings is an extraordinary remedy. Cf. Douglas v. Jeannette, 319 US 157, 87 L ed 1324, 63 S Ct 877, 882; Ex parte Young, 209 US 123, 52 L ed 714, 28 S Ct 441, 13 LRA NS 932, 14 Ann. Cas. 764."

In the case of Cleary v. Bolger, 371 U.S. 392, 9 L.ed.2d 390, the plaintiff brought an action in the United States District Court for the Southern District of New York seeking to enjoin proceedings in a state criminal prosecution. The District Court granted relief and the action was affirmed by the Court of Appeals, 293 F.2d 368. The Supreme Court of the United States reversed holding:

> "The withholding of injunctive relief against this state official does not deprive respondent of the opportunity for federal correction of any denial of federal constitutional rights in the state proceedings. To the extent that such rights have been violated, cf., e. g., Mapp v Ohio, 367 US 643, 6 L ed 2d 1081, 81 S Ct 1684, 84 ALR2d 933, supra, he may raise the objection in the state courts and then seek

> review in this Court of an adverse determination by the New York Court of Appeals. To permit such claims to be litigated collaterally, as is sought here, would in effect frustrate the deep-seated federal policy against piecemeal review."

Henderson v. Trailway Bus Company, 194 F.Supp. 423, affirmed 10 L.ed.2d 1044, 374 U.S. 488, was a "sit-in" case where the Negro complainant had been arrested for trespass under a Virginia statute for refusing to leave a drug store when ordered to do so. The case was pending in the Virginia courts. An action was brought to restrain prosecution of the state action. The Court, in denying this relief, held:

> "In the first place, a plain and adequate remedy at law is available to them, and this readiness, of course, completely refutes their appeal to equity jurisdiction. Redress at law is provided in their opportunity to defend the criminal prosecutions, indeed to stand mute until a case is made against them beyond a reasonable doubt under these very statutes, with no burden whatsoever upon them as defendants there. Nothing here indicates that a full and fair presentation, hearing and consideration of their views upon the validity of the two statutes cannot be had before the State courts in these prosecutions. Spence v.

> Cole, 4 Cir., 1943, 137 F.2d 71, 72. There is also the ultimate right of review in the Federal Supreme Court as illustrated by Murdock v. Commonwealth of Pennsylvania, 1943, 319 U. S. 105, 63 S.Ct. 870, 87 L.Ed. 1292. Irreparable injury to the plaintiffs through submission of their contentions in this manner to the State tribunals is not demonstrasted. This circumstance obviously undermines all foundation for the injunction claimed." (Emphasis added.)

Another Civil Rights case was Stefanelli v. Minard, 342 U.S. 117, 96 L.ed. 138. Petitioner was being prosecuted in the state court for bookmaking. State police entered his home without legal authority and seized property used by him in bookmaking. Petitioner sought equitable relief in the federal District Court to prevent the use of such evidence in the state criminal proceedings. Suit was brought under the Civil Rights Act for redress for deprivation by state officers of priviliges and immunities secured by the Constitution. The Court, in denying this relief, held:

> "'Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable

> Cole, 4 Cir., 1943, 137 F.2d 71, 72. There is also the ultimate right of review in the Federal Supreme Court as illustrated by Murdock v. Commonwealth of Pennsylvania, 1943, 319 U. S. 105, 63 S.Ct. 870, 87 L.Ed. 1292. Irreparable injury to the plaintiffs through submission of their contentions in this manner to the State tribunals is not demonstrasted. This circumstance obviously undermines all foundation for the injunction claimed." (Emphasis added.)

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> "'Hence, courts of equity in the exercise of their discretionary powers should conform to this policy by refusing to interfere with or embarrass threatened proceedings in state courts save in those exceptional cases which call for the interposition of a court of equity to prevent irreparable

> injury which is clear and imminent;....' Id., 319 US at 163, 87 L ed 1329, 63 S Ct 877, 882. No such irreparable injury, clear and imminent, is threatened here. At worst, the evidence sought to be suppressed may provide the basis for conviction of the petitioners in the New Jersey courts. Such a conviction, we have held, would not deprive them of due process of law. Wolf v. Colorado, 338 US 25, 93 L ed 1782, 69 S Ct 1359, supra.
>
> "If these considerations limit federal courts in restraining State prosecutions merely threatened, how much more cogent are they to prevent federal interference with proceedings once begun...."

Or see the language of this Court in Galfas v. City of Atlanta, 193 F.2d 931, as follows:

> "The well established rule that courts of equity will not ordinarily restrain criminal prosecutions is peculiarly appropriate to be applied by the federal court where the threatened action is prosecution in the State Court by State officers of an alleged violation of state law....
>
> "The assertion of a claim of deprivation of civil rights affects no abrogation of

the rule. Stefanelli v. Minard, 1951, 72 S.Ct. 118...." (Emphasis added.)

There is no factual basis here for any contention that petitioner will not receive a fair trial in the courts of the State of Mississippi and this would not be presumed and in fact there is a strong legal presumption to the contrary. *Harrison v. NAACP*, 360 U.S. 167, 3 L.ed.2d 1152; *Hawk v. Jones*, C.A. 8, 160 F.2d 807; *NAACP v. Bennett*, D.C. Ark., 178 F.Supp. 191; *Browder v. City of Montgomery*, D.C. Ala., 146 F.Supp. 127.

An attack on the motives of state officials does not justify the enjoining of a state court criminal action by a federal court of equity. The Complaint here makes a direct attack on the motives of the county prosecuting attorney and the county judge in instigating the submission of the guilt or innocence of perjury of Petitioner to the grand jury. This is not sufficient ground for the relief sought.

In *Ackerman v. International Longshoremen's Union*, 187 F.2d 800, cert. den. 342 U.S. 859, 96 L.ed. 646, a suit was filed in the federal court to enjoin the prosecution of several union members charged with violating Hawaii's statutes prohibiting riots, which said suits were pending in the courts of Hawaii. The Complaint alleged improper motives and bad faith on the part of the officials charged with the prosecution of said criminal actions sought to be enjoined. In reversing injunctions issued by the District

Court, the Court of Appeals for the Ninth Circuit said:

> "The trial court did not undertake to cite any case in which proof of bad faith in a criminal prosecution was held to establish reason for departure from the ordinary rule that a court of equity will not entertain a suit to enjoin criminal prosecutions.
>
> * * * *
>
> "The trial court recognized that 'the motive of the prosecutor is of course not relevant to the ordinary criminal proceeding.'
>
> "We cannot bring ourselves to believe that a defendant in a criminal case, who would not be permitted to plead or prove as a defense to the charge, that the prosecutor's motives were bad, could nevertheless by alleging such bad faith and the invalidity of the criminal statute, move into a court of equity and have those issues tried there. No case has been called to our attention which has applied the trial court's theory that proof of bad faith in the criminal prosecution is sufficient to warrant enjoining the criminal proceedings."

Compare Kentucky v. Powers, 201 U.S. 1, 50 L.ed. 633; Mooney v. Holohan, 294 U.S. 103, 79 L.ed. 791; Ex parte Hawk, 321 U.S. 114, 88 L.ed. 572.

Nor is Petitioner aided in obtaining the relief sought by her attempt to call this a class action and to seek relief for a purported class, i.e. all persons who are workers for the end of discrimination and segregation in Mississippi. Clearly, this is not a proper class action. The vague and indefinite description of the purported class depends upon the state of mind of a particular individual, rendering it difficult, if not impossible, to determine whether any given individual is within or without the alleged class. The members of a class must be capable of definite identification as being either in or out of it. Giordano v. Radio Corporation of America, C.A. 3, 183 F.2d 558; Mitchell v. Wright, D.C. Ala., 62 F.Supp. 580; Reddix v. Lucky, C.A. 5, 252 F.2d 930. Plaintiff cannot make this a class action by merely calling it such.

This is not an attempt to enjoin a prosecution for a breach of the peace arising from an alleged exercise of constitutional rights or peaceable assembly and demonstration, which might conceivably prevent other civil rights workers from exercising such constitutional rights. This, on the other hand, is an attempt to enjoin the prosecution of an individual for perjury. If it would have the effect of preventing others from committing perjury or making others more cognizant of the sanctity of their oath and more careful in the giving of testimony, then it will be beneficial. This Court cannot say that the Mississippi officers can never charge any person with perjury merely because she is a civil rights worker. The prosecution of one woman, although a civil rights worker, for perjury could not conceivably prevent others from continuing their work as civil rights workers.

Nor can this Court purport to determine in advance whether or not any civil rights worker should ever be prosecuted for perjury. Certainly, the Court would not say to civil rights workers that they were immune from any such prosecution and could commit perjury as freely as they so desired.

The issue is controlled by Douglas v. Jeannette, 319 U.S. 157, 87 L.ed. 1324, where the Court stated:

> "Nor is it enough to justify the exercise of the equity jurisdiction in the circumstances of this case that there are numerous members of a class threatened with prosecution for violation of the ordinance. In general the jurisdiction of equity to avoid multiplicity of civil suits at law is restricted to those cases where there would otherwise be some necessity for the maintenance of

> numerous suits *between the same parties involving the same issues of law or fact. It does not ordinarily extend to cases where there are numerous parties and the issues between them and the adverse party*--here the state--*are not necessarily identical.* Matthews v. Rodgers, supra (284 US 529, 530, 76 L.Ed. 454, 455, 52 S Ct 217), and cases cited. *Far less should a federal court of equity attempt to envisage in advance all the diverse issues which could engage the attention of state courts in prosecutions of Jehovah's Witnesses for violations of the present ordinance, or assume to draw to a federal court the determination of those issues in advance, by a decree saying in what circumstances and conditions the application of the city ordinance will be deemed to abridge freedom of speech and religion*." (Emphasis added)

The above authorities clearly reflect that the District Judge was eminently correct in denying the injunctive relief. This is even more true in this, an appellate court, where Petitioner is asking this Court to reverse the District Judge in refusing the injunctive relief. The refusal of the injunctive relief was clearly within the discretion of the trial judge and this discretion was not abused.

In Meiselman v. Paramount Films, C.A. 4, 180 F.2d 94, the Court stated:

> "...'In considering whether the granting of this preliminary injunction should be disturbed on this appeal, it is to be borne in mind that the granting of a temporary restraining order or preliminary injunction is without the sound judicial discretion of the court, and the action of the trial court will not be disturbed unless there has been a clear abuse of discretion...the test on appeal is not whether the appellate court would have granted or denied the injunction, but whether the record shows an abuse of authority by the trial judge...."

Cases cited in the above case, as authority for the holding, included: Meccano v. Wanamaker, 253 U.S. 136, 64 L.ed. 822; Warner Bros. Pictures v. Gittone, C.A. 3, 110 F.2d 292; South Carolina Power v. South Carolina Commission, 286 U.S. 525, 76 L.ed. 1268; United States v. Corrick, 298 U.S. 435, 80 L.ed. 1263. See also, Westinghouse Electric Corp. v. Free Sewing Mach. Co., C.A. 7, 256 F.2d 806.

Opposing counsel have cited no authority to this Court which would sustain a granting of injunctive relief here. Their original petition alleged that the controlling cases were United States v. Wood, 295 F.2d 772 and Jordan v. Hutcheson, 323 F.2d 597. In Appellees' response to the petition it was pointed out that the Wood Case simply held that Section 2283, Title 28 U. S. Code, does not apply to an action brought by the United States. Now in her brief Appellant admits that "...the significance of United States v. Wood, supra, is not properly at issue at this stage of the proceeding..." We submit it is not applicable at any stage of these proceedings, even if the appeal is perfected. The right to injunctive relief in the Wood Case was based solely and only on the fact that suit was brought by the United States. The decision rested on the following peculiar circumstances there: (1) Suit being brought by the United States, Title 28 U.S.C. 2283 was not applicable. (2) Suit was brought by the United States only on it own cause of action, the Government admitting that "the rights the government asserts are not the rights of Hardy; it assumes that Hardy will obtain a fair trial and that the existence of adequate state remedies will protect all of Hardy's constitutional rights" but that the Government had an equitable claim "even if Hardy were acquitted at the trial." (3) The action was based on and justified by 42 U.S.C.A. 1971(c) which by statute gave the United States Government a cause of action for "preventive" injunctive relief and said statute specifically giving a cause of action to the United States only and also removing the affirmative defense of adequate state remedy. There the hearing in the court below was had on less than twenty-four hours notice on affidavits of the Government only, the defendants having no time to file affidavits, and the decision was entered immediately and the injunctive relief was limited to the period in which the case should be remanded for a full hearing at least upon the motion for a preliminary injunction, and the Court specifically pointed out that "Nothing said in this opinion is intended to pass upon, or intimate any views as to the merits of the claim asserted by the United States."

Petitioner in its brief does not now mention Jordan v. Hutcheson, supra. The Jordan Case was not an action to enjoin a pending criminal procedure and the Fourth Circuit reversed and remanded because the District Court dismissed the Complaint as a matter of law without giving the plaintiffs an opportunity to offer evidence in support of its allegations.

Here, unlike in the Wood Case, we have extraordinary relief being sought by injunction filed in this Court. As pointed out, this Court in Greene v. Fair, 314 F.2d 200, supra, held that such relief would not be granted unless an appellant demonstrated to the Court that there was "great likelihood, approaching near certainty, that he will prevail when his case finally comes to be heard on the merits." We have cited at some length cases reflecting what proof would be necessary for Petitioner here to prevail if and when an appeal is prosecuted. Petitioner has totally failed to demonstrate to the Court that when the case is heard on the merits that she has proved either irreparable harm or damage, or the lack of adequate remedy at law, or that she could not obtain a fair trial in the Mississippi courts in her criminal prosecution.

There is no emergency here. Even if the Appellant's case was tried in the state court pending appeal here, the issue would not be moot in that the appeal here could not possibly take longer than Appellant would have to appeal to the Supreme Court of the State of Mississippi after her trial and would not in any way affect her right to full relief if she is denied any constitutional rights in the Supreme Court of the United States.

The District Court granted Plaintiff a lengthy hearing at which all parties offered testimony by witnesses. The Defendants took the stand and denied the allegations of the Complaint under oath. Plaintiff, although present throughout the hearing, did not take the stand or offer any evidence in support of the serious allegations made by her complaint against the State's highest officials.

Counsel for Appellant attempt to explain away the failure of the Appellant to take the witness stand in support of the allegations of her Complaint by stating that her sworn Affidavit was attached to the Complaint and nothing "would have been added" if she had testified. This is not only not an explanation, but is an admission of inability on her part to support her serious charges. The sworn statement consists merely of a denial of her guilt of perjury and the general legal conclusion, totally unsupported by any facts, that the Defendants had conspired to punish her unjustly and to discourage her and other civil rights workers from continuing civil rights activities. When each defendant took the stand and denied every material fact alleged in the Complaint, it was incumbent on Appellant to give the Court the benefit of any facts known to her which would have supported these serious charges, and this she did not do.

While a conspiracy can be proved by circumstantial evidence, it must be proved by testimony as to facts, not suppositions and conclusions, i.e. acts of and circumstances surrounding the defendants. Such proof must be full, clear and convincing. The acts and circumstances relied on must be inconsistent with a lawful purpose and do more than raise a mere suspicion or conjecture as to the existence of a conspiracy. Robinson v. Stevens, 249 F.2d 731, cert. den. 2 L.ed.2d 814; Asheim v. Pigeon Hole Parking, Inc., 175 F.Supp. 320, affirmed 283 F.2d 288; Red Owl Stores v. Amalgamated Meat Cutters, 109 F.Supp. 629, appeal dismissed 205 F.2d 959. "... And the issue of probability must be shown by facts as facts...without the intrusion therein of the opinion of nonexpert witnesses..." Columbus & G. R. Co. v. Coleman, Miss., 160 So. 277.

Whether or not this affidavit attached to the Complaint would have been admissible need not be decided. Rule 43(a) provides that "In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by these Rules." 43(e) merely authorizes affidavits on hearings on motions. However that may be, the affidavit here was not introduced in evidence.

On the other hand Appellant patently attempts to rely to prevail on the final appeal on some brief statements made by Defendant Jack Travis, County Prosecuting Attorney, and Defendant Moore.

Counsel's brief comments on the fact that the Defendant County Prosecuting Attorney personally took no action to have her charged with perjury but that the same was done on the order of the presiding judge. This is understandable in view of the fact that Section 2479 of the Mississippi 1942 Code gives both the power and the duty to the trial judge to determine whether a witness or a party has testified in such a manner as to induce a reasonable presumption that he has wilfully testified falsely.

Counsel's brief comments on statement of County Prosecuting Attorney Travis that in the numerous cases prosecuted by him no other person has been charged with perjury. Hundreds of the more than six thousand misdemeanor cases which he had prosecuted involved arrests of civil rights workers. And yet in not a single incident had one of them been charged with perjury. This fact tends to prove the opposite of contentions of Appellant, i.e. that there was any conspiracy or pattern of intimidation or threats against or punishment of civil rights workers by charging them with perjury.

The Defendant Travis did not testify that he co-operated with the trial judge in charging Appellant with perjury. On the other hand, he made it clear that the judge made the decision that the Appellant should be bound over to the grand jury and the County Prosecuting Attorney had no duty to perform in connection with this action. District Attorney Waller was under court order to submit the matter to the grand jury.

The statements made by counsel for Appellant on page 11 of their brief with reference to County Judge Moore's testimony are not supported by the record. The defendant judge did not give testimony containing inferences, strong or otherwise, that his association of plaintiff with newspaper reports of civil rights activities in Plaquemine, Louisiana, had any influence on his attitude toward her or upon his opinion of her veracity. As a matter of fact, he specifically denied that he had any preconceived ideas about the Appellant.

There is not one iota of testimony to support the statement that Appellant's known identity as a civil rights worker had anything to do with the criminal charge having been brought against her in the state court. Even if Judge Moore had been biased, which is denied, there would still be no right to injunctive relief against the pending case. The Judge acting alone and not in conspiracy with anyone ordered a grand jury investigation of whether or not she had committed perjury. The grand jury and the grand jury alone so found. The only Defendants now having any power or authority over the pending criminal case are District Attorney Waller, Circuit Judge Hendrick and Attorney General Patterson. Even Appellant does not suggest there was any evidence connecting any of these Defendants with the bringing of the charge or any bias or prejudice against Appellant because she is a civil rights worker. There is not one iota of testimony suggesting that these Defendants will not give her a fair trial. After the action of the grand jury they are required to continue the prosecution. If Judge Moore was in error in submitting the matter to the grand jury, she will be promptly acquitted.

Although we strenuously deny Appellant's right to an injunction pending an appeal, there is no intention on the part of any of the Appellees to set Appellant's criminal case for trial pending an appeal if and when an appeal is taken.

CONCLUSION

We, therefore, respectfully submit that: (1) The motion of Appellant for an order to be issued by this Court granting Appellant permission to proceed hereafter in this action in forma pauperis or an order directing the court below to enter an order granting such permission to Appellant should be denied. (2) The motion of Appellant for a stay of the prosecution of Appellant for perjury in the Mississippi state court pending appeal should be denied.

Respectfully submitted,

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BY ________________________
Attorneys for Appellees

CERTIFICATE

The undersigned of counsel certifies that a true and correct copy of the foregoing Brief was this day mailed by United States mail, postage prepaid, to the Honorable Paul O'Dwyer, O'Dwyer & Bernstien, 50 Broad Street, New York 4, New York, and R. Jess Brown, 125½ North Farish

Street, Jackson, Mississippi, Attorneys of Record for Appellant.

This the 23rd day of July, 1964.

OF COUNSEL

APPENDIX "A":

[Mississippi Code 1942, Recompiled].

§ 2315. Perjury--wilful and corrupt false swearing.

Every person who shall wilfully and corruptly swear, testify, or affirm falsely to any material matter under any oath, affirmation, or declaration legally administered in any matter, cause, or proceeding pending in any court of law or equity, or before any officer thereof, or in any case where an oath or affirmation is required by law or is necessary for the prosecution or defense of any private right or for the ends of public justice, or in any matter or proceeding before any tribunal or officer created by the Constitution or by law, or where any oath may be lawfully required by any judicial, executive, or administrative officer, shall be guilty of perjury, and shall not thereafter be received as a witness to be sworn in any matter or cause whatever, until the judgment against him be reversed.

APPENDIX "B":

[Mississippi Code 1942, Recompiled].

§ 2479. Court to commit palpable perjurer at once.

Whenever it shall appear to any court that a witness or party who has been sworn or examined in any case, matter, or proceeding pending before the court, has testified in such manner as to induce a reasonable presumption that he has wilfully and corruptly testified falsely to some material point or matter, the court may immediately commit such party or witness, by an order of process for that purpose, to prison, to take bond or recognizance with sureties for his appearing and answering to an indictment for perjury.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21638

LOIS CHAFFEE,

Appellant,

-against-

PAUL B. JOHNSON, JR., individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individualy and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT,

Appellees.

REPLY BRIEF FOR APPELLANT

Respectfully submitted,

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INDEX

Page

Preliminary Statement 1

I THE HOLDINGS OF ELLIS AND COPPEDGE 3

Ellis v. United States, 356 U. S. 674 (1958) 3

Gideon v. Wainwright, 372 U. S. 335 (1963) 4, 6

Coppedge v. United States, 369 U. S. 438 (1962) 8

United States v. Wood, 295 F.2d 772 (5th Cir. 1961) 11, 12

II NO FEDERAL COURT HAS EVER LIMITED THE RULE OF UNITED STATES V. ELLIS TO CRIMINAL APPEALS ONLY, AND THERE IS NO VALID REASON FOR ITS BEING SO LIMITED IN THIS CASE 13

John v. Gibson, 270 F.2d 36 (9th Cir. 1959) cert. denied 361 U. S. 970 (1960 . . . . 13, 16

Kremer v. Clarke, 285 F.2d 753 (6th Cir. 1960) cert. denied 366 U. S. 920 (1961), rehearing denied 366 U. S. 978 (1961) 13, 15, 19

Fulwood v. Clemmer, 295 F.2d 171 (D. C. Cir. 1961) 13, 16

Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963) cert. denied 375 U. S. 845 (1963) 13, 16

Stiltner v. Rhay, 322 F.2d 314 (9th Cir. 1963) cert. denied 376 U. S. 920 (1964) 13

(continuation)

Page

Loum v. Underwood, 262 F.2d 866 (6th Cir. 1959) 15

King v. Carmichael, 268 F.2d 305 (6th Cir. 1959) 18, 20, 21

Moss v. Thomas, 299 F.2d 729 (6th Cir. 1962) 18, 21

Ellis v. United States, supra 19

Hardy v. U. S., 375 U. S.277 (1963) 23

Draper v. Washington, 372 U. S. 487 (1962) 23

III THE RULE OF COPPEDGE V. UNITED STATES SHOULD NOT BE LIMITED TO CASES THAT ARE PURELY "CRIMINAL" IN THEIR PROCEDURAL CONTEXT. THAT RULE SHOULD ALSO BE APPLIED TO CIVIL CASES IN WHICH THE RIGHTS OF CRIMINAL DEFENDANTS ARE ASSERTED 24

Coppedge v. United States, supra 25, 28, 31

IV THE CLAIMS STATED IN THIS ACTION DO NOT SOUND EXCLUSIVELY IN CONSPIRACY. THE COMPLAINT HEREIN STATES CLAIMS AGAINST EACH OF THE DEFENDANTS INDIVIDUALLY AS WELL AS CLAIMS AGAINST ALL OF THE DEFENDANTS ACTING IN CONSPIRACY 33

CONCLUSION 36

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 21638

LOIS CHAFFEE, :
Appellant, :
-against- :
PAUL B. JOHNSON, individually and :
as Governor of the State of Mississippi,
ET AL., :
Appellees. :

REPLY BRIEF FOR APPELLANT

Preliminary Statement

This brief is submitted in response to the BRIEF OF APPELLEES, DEFENDANTS BELOW, dated July 23, 1964. Because a stipulation has been submitted to this Court pursuant to which appellant's motion for a stay pending appeal is withdrawn, this brief does not respond to those portions of appellees' brief which are concerned with the appropriateness of injunctive relief.

This brief addresses itself at some length to the questions raised by appellees' brief with respect to the proper rules of law applicable on the facts of this case to the granting or denial of appellant's petition for permission to proceed hereafter in this proceeding in forma pauperis. We submit that appellant's brief dated July 8, 1964, states briefly and accurately the appropriate principles of law, and no statement made there is qualified here in any way. That brief was not sufficiently complete, however, to cover all of the arguments made by counsel for appellees in response to it. We believe that the seriousness of the principles of law here discussed, their novelty in this Circuit, and the interests of appellant at stake in this proceeding justify the length of this brief, and we ask the Court's indulgence in reading it.

I

THE HOLDINGS OF ELLIS AND COPPEDGE

Ellis v. United States, 356 U.S. 674 (1958) was decided by the Supreme Court in a Per Curiam opinion slightly more than one page in length. The ruling was that in denying the petitioner leave to appeal in forma pauperis the Court of Appeals below misinterpreted 28 U.S.C. § 1915 by requiring of the petitioner a greater showing of strength in the grounds for his appeal than the statute actually requires by its language; in so doing the Court of Appeals committed reversible error.

Although the opinion is brief, the Supreme Court was able, in the few words it used, to state in at least four different ways the basic idea it wished to convey: that all an indigent appellant need show to be entitled to an in forma pauperis appeal is that he is making the appeal "in good faith," i.e., that somewhere among the contentions in his petition he has raised at least one question that cannot properly be characterized as "frivolous."

It is submitted that the rationale of the case is really not very complex and that at the heart of it is the notion that all the petitioner has to do is to raise in good faith an issue that is not clearly frivolous: he need not make even the slightest showing that he will prevail on that issue, because the question at this stage is whether he should be allowed to argue the issue, not whether he will win on it. The Supreme Court appears to have an aversion for prejudgment of cases where poor persons seek to assert legal rights. In the Ellis opinion it clearly conveys the idea that it wants the Courts of Appeals to make a conscious effort to keep an open mind about the seriousness of questions raised by indigent petitioners and to make a positive effort to dig out the substantial questions when the papers submitted are not clear due to lack of counsel.

In light of many recent cases in the area of federal habeas corpus (See addresses by Judge Walter L. Pope, 33 F.R.D. 409 and 33 F.R.D. 423 (1963), and cases cited thereafter and discussed therein.) and of such related cases as Gideon v. Wainwright, 372 U.S. 335 (1963), we submit that it is not reading too much into the Ellis opinion to say that the Supreme Court is actively seeking to neutralize the preconceived and cynical notion that in any given case a pro se petition by a prisoner is probably being brought in bad faith for the sole purpose of gaining a trip to court, an undeserved chance at freedom, and possibly some publicity after the fashion of Gideon or Chessman. The Supreme Court seems to be concerned lest cynicism (even if it is justifiable on the basis of experience and statisties) color the judgment of the circuit judges and cause them to miss that one case out of a great many where the prisoner's petition has the ring of truth and depicts circumstances from which diligent counsel could have derived arguments worthy of consideration. And the Court is clearly engaged in a determined effort to insure, as completely as it is reasonably possible for it to do so, that valid rights are not lost and criminal penalties imposed because one man has less money than another.

The reasoning of the Ellis opinion is quite clear and very carefully worked out. (In light of subsequent events, the only defect in the opinion seems to have been that it stated its point too succintly.) "The only statutory requirement for the allowance of an indigent's appeal is the applicant's 'good faith'. 28 U.S.C. § 1915." The presence (or absence) of "good faith" is to be determined by objective means and not by conjecture as to the applicant's state of mind: "In the absence of some evident improper motive, the applicant's good faith is established by the presentation of any issue that is not plainly frivolous." (Emphasis supplied.) All that must be "presented" is an issue. If the applicant has done that, raised a question, no further showing of merit is necessary: "The good-faith test must not be converted into a requirement of any particular degree of merit."

(Emphasis supplied.) Those are very stern and very clear words.

And "presentation" of an issue does not necessarily mean that the issue must be set forth in a clear and precise manner. The requirement of "presentation" is satisfied if the applicant sets forth facts or circumstances out of which "conscientious investigation" can produce a non-frivolous argument or issue. And if the applicant has no counsel to provide the kind of "conscientious investigation" that is necessary, then the judge must either assume the role of a quasi-counsel and himself conduct the requisite search or appoint counsel to conduct it, for "representation in the form of an advocate is required."[1] (Emphasis supplied.) If opposing counsel admits that at least one issue presented cannot "necessarily be characterized as frivolous," then no such investigation is necessary. In view of the admission made by counsel in the Ellis case, the Court's discussion of the necessity of "conscientious investigation" was completely unnecessary and therefore highly significant, for the Court does not often insert meaningless dicta in its opinions. But not enough of the Circuit Courts seem to have bothered to read the Ellis opinion carefully. Judge Pope, for one, has openly admitted that there were implications in cases such as this which should have been heeded. (33 F.R.D. at 423)

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[1] If one reads the last two words literally, it is possible to see in the Ellis opinion a clear fore-warning of the result in Gideon v. Wainwright, supra.

Thus Ellis was very much a neutral holding. It imposed no burden whatever on the government and imposed upon the applicant only the duty of raising at least one substantial question somewhere in his petition. But this neutral concept was not effectively conveyed to the lower courts and therefor did not work. The circuit courts continued to take a very jaundiced view of petitions to proceed in forma pauperis and to deny permission in nearly every case, often by expressly relying on the denial of such permission below (if such a decision was made), and the Supreme Court was forced to reverse decision after decision whenever the language of the court below or the facts of the case indicated that the teaching of Ellis was not applied. In June of 1963, Judge Pope could point with chagrin to the fact that:

> "At the term just ended the Court granted 88 petitions for certiorari in forma pauperis. This breaks all records for the Court. It is three and one-third times the average for the preceding 10 terms. Summary relief, without argument, was given in 65 of these 88. The remaining 23 were placed on the calendar for argument." (33 F.R.D. at 423)

Although Ellis involved a criminal appeal, nowhere in its opinion did the Court emphasize or even refer to that fact except in one of its introductory sentences.

After four years of waiting for Ellis to work a change in the treatment of in forma pauperis cases by the courts below, the Supreme Court tried again in Coppedge v. United States, 369 U.S. 438 (1962), to shift the burden of deciding these questions down to the Circuit Courts. In Coppedge the Court, through Chief Justice Warren, wrote a much longer opinion in which it states firmly at the outset that its purpose is to decide "what standard is to be applied by the lower federal courts in passing upon" applications for permission to proceed in forma pauperis. The opinion goes beyond Ellis and holds that in order for the prosecuting authority to succeed in "opposing an attempted criminal appeal in forma pauperis" it must sustain the burden of showing "that the case is lacking in merit, indeed, that the case is so lacking in merit that the court would dismiss the case on motion. . . , had the case been docketed and a record been filed by an appellant able to afford the expense of complying with those requirements." (369 U.S. at 448)

In stating the basis for the decision, Chief Justice Warren does, as counsel for appellees have indicated in their brief, refer repeatedly to "criminal appeals" and to the fact that in arriving at its ruling the Court interpreted 28 U.S.C. § 1915 in light of "the law applicable to criminal appeals generally."

However, he also states that:

> "In so holding we have been impelled by considerations beyond the four corners of 28 U.S.C. § 1915, considerations that it is our duty to assure to the greatest degree possible, within the statutory framework for appeals created by Congress, equal treatment for every litigant before the bar." (Emphasis supplied, 369 U.S. at 446-7.)

It will be noted that in this crucial statement the Court does not mention "criminal appeals" at all, but rather grounds its decision squarely on the policy of securing equal treatment for "every litigant." It may be that Justice Warren chose deliberately to write "every litigant" rather than "every criminal appellant." Is it possible that the Court is once again using the tactic employed in Ellis of carefully choosing key words meant to be taken literally as portents for the future? In the same paragraph the opinion refers to Ellis as "a case comparable to the one before us here." Are these opinions setting the groundwork for a future ruling on the rights of "every litigant"?

Except for placing the burden upon the prosecuting authority to show frivolousness, Coppedge adds nothing but force and explanation to the holding of Ellis. There are two possible interpretations of Coppedge: (1) that it applies to criminal appeals only, thus leaving the "neutral" rule of Ellis to be applied to civil appeals in forma pauperis, or (2) that it applies to "every litigant" who comes within the "statutory framework" of 28 U.S.C. § 1915, thus superseding Ellis entirely. There is clearly no basis for reading backwards from Coppedge to Ellis, as counsel for appellees attempts to do, in order to arrive at the conclusion that neither Ellis NOR Coppedge applies to civil appeals in forma pauperis, for it cannot reasonably be said that the Court's avowed policy of "equal treatment of every litigant before the bar" means equal treatment for rich and poor criminal appellants while the rich civil appellant is allowed to maintain an unfair advantage over his impoverished counterpart:

> "The point of equating the test for allowing a pauper's appeal to the test for dismissing paid cases, is to assure equality of consideration for all litigants. The equation is intended to place the burdens of proof in all cases on the same party - - - in these cases, on the government." (Emphasis supplied. 369 U.S. at 447.)

If the burden of showing frivolousness is indeed upon the same party "in all cases," then there can be no doubt that in this case the appellees are the "party" with the burden. And they do not have the assistance of a finding of frivolousness below. Indeed, judging from the carefully chosen language of their brief, it appears that even counsel for appellees is not willing to stand squarely behind the proposition that appellant's appeal does not raise a single issue that is more than merely frivolous.

Appellees have tacitly admitted in their briefs that the only significant distinction between United States v. Wood, 295 F.2d 772 (5th Cir. 1961), and the present case is the fact that the plaintiff in Wood was the United States, whereas plaintiff in this case is a private citizen and a well-known voter registration worker. If they are wrong in their contention that the rationale of Wood limits the application of its holding to actions brought by the United States, then they apparently concede that a temporary or interlocutory injunction must issue in this case. It cannot reasonably be argued that this is not a fairly close question. We doubt that counsel for appellees is prepared to argue that this is an utterly frivolous issue. In any event, they have argued the point as if it were something more than a foregone conclusion.

It makes no difference in this case whether the rule of Ellis or the rule of Coppedge is applied. In either case the test is whether or not the appeal is patently and completely frivolous. It is perfectly clear that the main issue raised by this appeal, i.e., the applicability to this case of U.S. v. Wood, supra, is very substantial and may even be dispositive of certain aspects of this case.

II

NO FEDERAL COURT HAS EVER LIMITED THE RULE OF UNITED STATES V. ELLIS TO CRIMINAL APPEALS ONLY, AND THERE IS NO VALID REASON FOR ITS BEING SO LIMITED IN THIS CASE

Even if one accepts the narrower of the two possible interpretations of Coppedge suggested above in Section I of this brief, he is compelled to apply the slightly more limited rule of Ellis to civil appeals *in forma pauperis*. Although the civil cases under 28 U.S.C. § 1915 are few, it is quite clear that the Circuit Courts have drawn no distinction since Ellis between criminal and civil appeals under that section. John v. Gibson, 270 F.2d 36 (9th Cir. 1959), cert. denied, 361 U.S. 970 (1960); Kremer v. Clarke, 285 F.2d 735 (6th Cir. 1960), cert. denied, 366 U.S. 920 (1961), rehearing denied, 366 U.S. 978 (1961); Fulwood v. Clemmer, 295 F.2d 171 (D. C. Cir. 1961). Cf. Weller v. Dickson, 314 F.2d 598 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963); Stiltner v. Rhay, 322 F.2d 314 (9th Cir. 1963), cert. denied, 376 U.S. 920 (1964).

In John v. Gibson, supra, plaintiff brought a civil rights action in which he based jurisdiction upon

28 U.S.C. § 1343 and his claim upon an alleged denial of due process of law. Despite a certification of "bad faith" by the court below, the Ninth Circuit conducted its own independent examination of the record and, upon due consideration, arrived at the same conclusion that the district court had reached. While acknowledging that it did not have before it a criminal appeal, the court nevertheless applied the rule of Ellis:

> "Ellis v. United States, in which this test was announced, is an appeal from a criminal conviction, while the appeal before us is civil. However, section 1915, the statute being construed in Ellis, expressly applies in both civil and criminal proceedings. It follows that the construction given the statute in that case is equally applicable in a civil appeal. It is true that Rule 39(a), Federal Rules of Criminal Procedure, 18 U.S.C.A., referred to in Ellis, has no counterpart in the Federal Rules of Civil Procedure, 28 U.S.C.A. Nevertheless a court of appeals may, in the exercise of its plenary power, dismiss a civil appeal as frivolous, Jimenez v. Barber, 9 Cir., 252 F.2d 550.
>
> The record does not evidence an improper motive on the part of John in bringing this appeal. Therefore, under the Ellis test, the certification must be set aside and permission must be granted to appeal in forma pauperis unless the issues raised on the appeal are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant." (270 F.2d at 39.)

In Kremer v. Clarke, supra, an attempt was made to take an appeal in forma pauperis from a final order in a corporate reorganization proceeding in which the district court terminated the proceeding and ordered payment of a tax claim filed by the United States. The opinion of the Sixth Circuit does not indicate whether there was or was not a certification of "bad faith" below.

Here again the Circuit Court made an independent review of the record and concluded that the appeal raised no substantial questions because all the points raised by the appellant were res judicata, since they either were or should have been argued and decided earlier in the proceedings or in related proceedings. In its opinion the Court cites Loum v. Underwood, 262 F.2d 866 (6th Cir. 1959) (which does not cite Ellis), for the proposition that "the granting of leave to appeal in forma pauperis is discretionary" but adds to that statement the qualification that such leave "should not be granted if the appeal would be dismissed regardless of the pauperous condition of appellant" (citing Ellis). Thus the Sixth Circuit clearly acknowledged that Ellis had changed the law as stated in Loum, i.e., that an application to proceed in forma pauperis could properly be denied on the basis that the petition "is without legal merit." It will be noted that although the court states (285 F.2d at 737) that "the granting of leave to appeal in forma pauperis is discretionary," it did not base its decision on the ground that there was not an abuse of discretion below, but rather considered the application _de novo_ as the Ninth Circuit did in _John v. Gibson, supra_. _But cf_. _Weller v. Dickson, supra_.

In _Fulwood v. Clemmer, supra_, the plaintiff filed a petition in the district court seeking relief in the nature of an injunction (erroneously labeled "mandamus") against alleged cruel and unusual punishment imposed because of critical petitions filed by plaintiff inmate against defendant prison officials. The district court refused permission to file the complaint without prepayment of costs, but granted permission to appeal its refusal _in forma pauperis_.

The District of Columbia Circuit held, after reviewing the facts as alleged, that the district court erred in its requirement of costs as a precondition to filing of the petition. In his concurring opinion, Judge Edgerton took the opportunity presented by the case to discuss the pertinent principles of law as follows (295 F.2d at 174):

" An indigent must be allowed to proceed in forma pauperis unless the issues he raises are "plainly frivolous." No "preliminary showing of any particular degree of merit" is required. Ellis v. United States, 356 U.S. 674, 78 S.Ct. 974, 2 L.Ed. 2d 1060. Ellis was a criminal case and directly determined only the right to appeal, not the right to file a petition in the District Court. But 28 U.S.C. § 1915, which the Supreme Court cited, is not restricted to criminal cases or to appeals but applies to "any suit, action or proceeding, civil or criminal, or appeal therein ***." It may be that the Ellis principle does not extend to the filing of complaints in all sorts of civil suits, but a recent decision of the Supreme Court leaves little room for doubt that it applies to the filing of the present petition for relief.

Smith v. Bennett, decided April 17, 1961, holds that "to interpose any financial consideration between an indigent prisoner of the State and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws" and that an indigent must therefore be allowed to file without a fee a petition, which a non-indigent might file, for a writ of habeas corpus. 365 U.S. 708, 709, 81 S.Ct. 895, 6 L.Ed.2d 39. Though the equal protection clause of the Constitution applies in terms only to the states, "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government," Bolling v. Sharpe, 347 U.S. 497, 500, 74 S.Ct. 693, 98 L.Ed. 884. It may follow that a federal court's refusal to file the non-frivolous petition of an indigent in circumstances in which a non-indigent might file would deny a constitutional right. But we need not reach any constitutional question, because 28 U.S.C. § 1915 covers the case."

In the language just quoted, Judge Edgerton makes two very significant points: (1) that some civil actions involve considerations virtually identical to those in criminal cases and (2) that serious questions under the Equal Protection Clause are raised whenever crucial distinctions are made between litigants on the basis of economic status - whether such distinctions are made in civil or criminal litigation. Both points are directly applicable to the present case.

It is submitted that the language of the opinions in Coppedge does not justify a departure on the part of this Court from the pattern clearly established by the Ninth, Sixth, and District of Columbia Circuits. Our research has disclosed not a single case since Ellis in which the court refused to apply the rule of that case to a civil appeal.

King v. Carmichael, 268 F.2d 305 (6th Cir. 1959), cert. denied, 361 U.S. 968 (1960), and Moss v. Thomas, 299 F. 2d 729 (6th Cir. 1962), which appellants cite for the proposition that 28 U.S.C. § 1915 does not apply "to both civil and criminal cases" (Brief, pp. 21-22), clearly do not stand for that proposition at all for the simple reason that neither of those cases involved the application of section 1915. In both of those cases permission to proceed in forma pauperis was granted by the district court. Each of them involved only the question of whether or not the Circuit Court should grant a certificate pursuant to 28 U.S.C. § 753(f) giving appellant permission to have transcripts of the record below made at government expense. Neither of those opinions cites Ellis v. United States.

In light of Ellis, Coppedge, and related cases recently decided by the Supreme Court in the area of the procedural rights of poor persons, we submit that even on the narrow point decided in them, King and Moss run directly contrary to the direction in which the law is developing and should, for that reason, not be followed by this Court. Kremer v. Clarke, supra, indicates quite clearly that the Sixth Circuit itself does not limit the rule of Ellis to criminal cases only. And the absence of reference to either Ellis or Coppedge in the King and Moss opinions leaves it an open question whether or not the Sixth Circuit would interpret 28 U.S.C. § 753(f) today as it did in those two cases. It is at least a reasonable conjecture that if a petition for certiorari had been filed in the Moss case on the ground that the opinion either misconstrued section 753(f) or violated the Equal Protection Clause, the petition might well have been granted.

In deciding the relevance of the King and Moss opinions to the present facts, we respectfully suggest that this Court consider the fact that the reasoning behind those two decisions is far from persuasive. In each case the Circuit Court refused absolutely to review the decision of the court below denying appellant a transcript at government expense. In King v. Carmichael, refusal to review the evidence was based upon the highly questionable ground that counsel for appellant had neglected to designate a record for the court's consideration or to provide a narrative summary of the pertinent evidence below. The court did not consider either the possibility of calling up a record on its own motion or that of allowing counsel to correct its oversight. It is submitted that denial of review because of an easily correctible error on the part of counsel is a questionable practice at best. And the court refused to review the denial of a transcript for no stated reason at all, apparently on the theory that the refusal of the district court to issue a certificate of non-frivolousness under 28 U.S.C. § 753(f) is either not reviewable or reviewable only at the discretion of the circuit court. The opinion states (268 F.2d at 306) that "No such certificate has been given." It apparently did not consider the possibility of issuing such a certificate itself.

In Moss v. Thomas, supra, decided nearly three years later, the reasoning is even more questionable. In that opinion the Sixth Circuit states the holding of King v. Carmichael to be "that the regularity of the proceedings below can not be questioned on appeal and the transcript printed at government expense without a certificate from the trial judge certifying that the appeal is not frivolous . . . ." In that statement the court is clearly mistaken on two counts:

(1) It does not take into account the fact that if counsel is satisfied to rely upon his memory or to read the transcript in the office of the court clerk, an appeal can be taken without a transcript being issued to counsel at government expense. No certificate is required for a transcript of proceedings below to be issued to the circuit court as part of the record. 28 U.S.C. § 753(f) states clearly that the court reporter of the district court "shall not charge a fee for any copy of a transcript delivered to the clerk for the records of the court." Once designation of record is made, issuance of the record to the circuit court should happen automatically unless the designation is modified by that court under Federal Rule 75(m).

(2) It assumes that the refusal of a free transcript below is a non-reviewable decision and

fails to acknowledge that under the clear language of section 753(f) either the trial judge or a circuit judge may issue the necessary certificate. Thus the circuit court has power to issue the certificate on application *de novo* without the necessity of reviewing the decision below except to accord it due consideration and some significant weight.

When 28 U.S.C. §§ 1915 and 753(f) are read together, the statutory scheme becomes quite apparent. Under both statutes the circuit court is given full power to review the record for the purpose of determining whether or not the appeal raises any question that is more than merely frivolous. That power is not limited to the review of a discretionary ruling below, for the appellate court has expressly stated statutory authority to act *de novo* under both § 1915 and § 753(f). In *Ellis* and *Coppedge* the Supreme Court has clearly indicated that the power of the circuit court to review the record *de novo* in search of substantive questions is in fact a positive duty. Once the circuit court decides under § 1915 that at least one substantial question has been raised by the appeal, no sensible reason can possibly exist for its refusing to "certify" what it has just found. It is submitted that frugality on behalf of the government by the judges involved is not a sufficient excuse for the denial of a certificate under § 753(f) where a substantial question exists, for such an excuse would necessarily involve an invidious discrimination between litigants on the basis of economic status in violation of the Equal Protection Clause of the federal Constitution. See Hardy v. U.S., 375 U.S. 277 (1963) and Draper v. Washington, 372 U.S. 487 (1962).

III

THE RULE OF COPPEDGE V. UNITED STATES SHOULD NOT BE LIMITED TO CASES THAT ARE PURELY "CRIMINAL" IN THEIR PROCEDURAL CONTEXT. THAT RULE SHOULD ALSO BE APPLIED TO CIVIL CASES IN WHICH THE RIGHTS OF CRIMINAL DEFENDANTS ARE ASSERTED.

Even if this Court should interpret the rationale of Coppedge as limiting its application to criminal cases, the rule of that case should nevertheless be applied to the facts here presented, for this case is actually, though not technically, in the nature of a criminal appeal. The interests of the appellant in this case are precisely those which a prisoner convicted of a federal or state crime seeks to protect when he appeals, petitions for habeas corpus, or files a complaint in a federal court under the federal civil rights statutes, namely the right of every American to be free from either the threat or the reality of criminal punishment where the requirements of the federal Constitution and the applicable principles of law have not been strictly and conscientiously complied with by the prosecuting authorities. Every citizen is entitled to freedom from unjust incarceration unconstitutionally imposed, and the federal government has a valid interest, created by the Constitution and by the civil rights statutes, in seeing to it that such incarceration does not occur.

It is submitted that two major considerations lie at the heart of the opinion in Coppedge v. United States, supra:

(1) concern on the part of the Supreme Court that every reasonable procedural precaution be taken to insure that persons accused of crime are not unjustly deprived of their freedom, and

(2) concern that, within practical limits, all litigants receive equal treatment before the bar of justice without regard to economic status.

When stated as a policy, these considerations mean that as the economic worth of any given litigant is reduced as compared to other litigants attempting to assert similar rights, the Constitution imposes a duty upon the courts, both state and federal, to take reasonable precautions, given the nature of the rights in question and the relative financial disparity among litigants attempting to assert such rights and between the litigants in a particular case, to insure that the outcome of any given case does not turn, either exclusively or primarily, upon the fact that one party was lacking in necessary funds.

Although lower federal courts and higher state courts have both the power and the duty to establish such reasonable precautions in particular circumstances, thus far the Supreme Court has been almost solitary in establishing them. Only when it gives some aspect of the machinery of justice a radical overhauling through interpretation of the Constitution, are the other courts in this country moved to examine the kind of treatment litigants are getting in that machinery. And when they do look at court procedures and practices, many judges seem to do so with the eye of a prosecutor or that of a budget director and not with the eye of a litigant who happens to have a valid claim to relief. A series of notable exceptions to what may be the prevailing pattern is to be found in the symposium of Federal Judges entitled, Habeas Corpus and Post-Conviction Review," 33 F.R.D. at 409-505. But even those statements were made only after the writing had been placed on the wall by the Supreme Court in heavy characters by dozens of opinions and hundreds of reversals.

One would have been most happily flabbergasted any time during the last ten or fifteen years to find that a State Supreme Court or a Federal Circuit Court had anticipated a significant decision of the Supreme Court in the area of the procedural rights of those accused of crime. It is submitted that such a decision would not have reflected at all badly upon the judges who decided it. It is submitted that the Supreme Court does not have a monopoly on judicial initiative.

In language that has already been often quoted, Chief Justice Warren stated, in his opinion in Coppedge, that "When society acts to deprive one of its members of his life, liberty or property, it takes its most awesome steps." (369 U.S. at 449) That, he said, is the reason why scrupulous attention must be given by the courts to insure that the nation's criminal laws are enforced in a "prompt, eminently fair and sober" manner.

In this case the "closed society" of the State of Mississippi is acting to deprive, not one of its "members", but one of a group that appellees refer to publicly as "outside agitators" of as much as ten years of her life. She has brought this action, as the federal statutes cited in the complaint entitle her to do without exhaustion of state remedies, stating facts sufficient to indicate that a substantial claim under the Constitution has been stated. Additional facts substantiating her claim were inadvertently provided by some of the defendants at the hearing before Judge Mize on April 20, 1964. What appellant is seeking to do in this action is to prevent the "closed society" of Mississippi from taking one of its most "awesome steps" against her without a substantial factual reason beyond mere emotional reaction and vindictive hatred. That society has recently taken even more awesome and frightening steps against three of appellant's fellow civil rights workers - perhaps under color of official authority. But the official action it proposes to take against appellant in this case is awesome enough to justify this Court in applying the rule of Coppedge v. United States to this case even though it is technically civil so far as its procedural origin is concerned.

At page five of their brief dated July 23, 1964, appellees assume that even if defendant Moore ordered the prosecution of appellant for reasons grounded in malice and prejudice, any errors in his judicial behavior will be corrected by twelve good (white) men and true of the State of Mississippi. In light of recent events, of the history of Mississippi, and of the well-known attitude of the official power-structure (if not of the entire white population) toward civil rights workers from the North, it is submitted that that assumption involves something of a non-sequitur, to say the least.

In refutation of that assumption, in support of appellant's contention that for her a fair trial is not possible in the state courts of Mississippi, and as an indication of a state of affairs in that State which is so pervasive and omnipresent that it has invaded the minds of some of the most respected lawyers in Mississippi, (those who represent appellees in this case), we would like to draw the attention of this Court to page 26 of appellees' brief where counsel for appellees state that the "criminal action for perjury against Appellant" which is now pending in the Circuit Court of Hinds County, Mississippi, "has followed a grand jury finding of GUILT." (Emphasis supplied.)

In deference to the integrity and established legal competence of counsel for appellees, we must regard this bizarre statement as an inadvertent slip of the mind and of the pen. But even as so regarded this statement must be viewed by this Court as having considerable significance, for as every judge knows a guilty secret is often allowed to slip out on the witness stand through a slip of the tongue.

In this case the guilty secret is that for all practical purposes appellant was found guilty by the grand jury which defendant Moore set in motion, because as counsel for appellees know full well, an all white jury in the Circuit Court of Hinds County, Mississippi, will be no harder to convince that appellant should spend ten years in jail than the grand jury was, even on the slim evidence available to the prosecution. This is how a sick society operates when it is gripped by hatred and hysteria at the thought of having to give up some of its long-established prerogatives: it seeks scapegoats for its anger in those who attempt to initiate change. Christ and Socrates are two of the most well-known victims of sick societies, but there have been many others.

We submit that in this case the steps which the closed society of Mississippi is attempting to take against the appellant are more than merely "awesome," they are morally repellant because they are without any reasonable basis and can be explained only as the product of unreasoning emotional reaction.

This Court is, in many respects, the conscience of the South. We sincerely doubt that there is a single member of this Court who, upon being informed of the facts of this case, could honestly express complete confidence that if appellant is tried for perjury in Mississippi, she will be tried by an impartial jury that is not subject to overwhelming social pressures.

The pressures imposed upon the jury that tried Jack Ruby in Dallas were neither so immediate nor so great as the pressures that will be put upon any jury in Mississippi that is given an opportunity to put a civil rights worker in prison for ten years for saying unflattering things (even if they were true) about the defenders of justice and the Southern Way of Life in Jackson, Mississippi.

Under the United States Constitution and the federal statutes cited in the complaint herein, the federal courts are an appropriate forum for the adjudication of appellant's federal and constitutional rights. This case involves considerations on behalf of appellant identical to those of a criminal defendant taking an appeal. Her personal lack of funds has not been seriously questioned. She should be permitted to proceed hereafter in forma pauperis, and the rule of Coppedge v. United

States should be applied to place upon appellees the burden of demonstrating that this appeal, seeking a temporary or interlocutory injunction to prevent the case from becoming moot, is utterly frivolous and raises no substantial questions whatever.

IV

THE CLAIMS STATED IN THIS ACTION DO NOT SOUND EXCLUSIVELY IN CONSPIRACY. THE COMPLAINT HEREIN STATES CLAIMS AGAINST EACH OF THE DEFENDANTS INDIVIDUALLY AS WELL AS CLAIMS AGAINST ALL OF THE DEFENDANTS ACTING IN CONSPIRACY.

In every brief they have submitted in this proceeding appellees have based their contention that the claims stated by appellant are groundless upon the assumption that the claims allged in the complaint herein sound exclusively in conspiracy and that unless proof is submitted of conspiratorial conversations and agreements actually overheard by a witness for the plaintiff, the entire complaint must fall.

Such an assumption is completely unwarranted, as the complaint clearly indicates.

As a matter of fact, appellees Moore, Travis, and Waller have admitted to certain conversations and other communications between them with respect to the prosecution of appellant for perjury. If that prosecution should ultimately be held to constitute an intentional violation of appellant's constitutional and federal statutory rights, then such conversations would, under well-established principles of the law of conspiracy, be more than enough to render those defendants liable under such a charge. But even without those admitted communications as indicia of conspiracy in this case, the complaint sufficiently states individual claims against each of the defendants which, if proper proof is produced against any one of them, are more than sufficient to support a claim against such individual defendant alone without any proof whatever of conspiracy having been produced.

Paragraph 36 of the complaint, for example, states quite clearly that "each of the defendants" possesses certain knowledge of the prosecution of the defendants and of the usual processes of justice in Mississippi and that

> ". . . Because (each) of the defendants possess(es) such knowledge, the failure, neglect and refusal of each of them to prevent or to make honest attempts to prevent the prosecution of plaintiff for perjury constitutes a continuing violation by each of them of 42 U.S.C. § 1986, for which each of them is liable in damages for all harm and injury caused to the plaintiff by such prosecution. . . ."

In response to this paragraph, some of the defendants have attempted to justify their failure to make "honest attempts" to stop this prosecution by claiming lack of power or authority to do so. We find it difficult to believe that District Attorney Waller would not drop the prosecution of this case if instructed to do so jointly by the Governor of Mississippi, by the Attorney General of the State, and by the judge who initiated the prosecution. And we find it impossible to believe that the prosecution would not cease forthwith if the Governor were to assure District Attorney Waller, under oath, that if appellant is convicted, he will immediately exercise his perogative as Governor and pardon her.

It is perfectly clear from the face of it that paragraph 36 of the complaint states a claim against each and every one of the defendants without making any mention of conspiracy among them, nor is such conspiracy required by 42 U.S.C. § 1986.

CONCLUSION

In light of the foregoing, it is respectfully submitted that this Court should (1) enter an order granting appellant permission to proceed hereafter in this proceeding in forma pauperis and (2) expressly certify in such order that the appeal herein from the order below denying appellant a temporary or interlocutory injunction "is not frivolous but presents a substantial question" for purposes of 28 U.S.C. § 753(f) and that pursuant to that provision appellant should be furnished with transcripts of the proceedings below paid for by the United States.

Respectfully submitted,

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Paul O'Dwyer, Esq.
of counsel

R. JESS BROWN
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Office & P. O. Address
125-1/2 North Farish Street
Jackson, Mississippi

Dated: August 21, 1964

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

LOIS CHAFFEE,

Appellant,

-against-

PAUL B. JOHNSON, JR., individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEO F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississipp, W.D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT,

Appellees.

No. 21638

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

To the Honorable Hugo L. Black, Associate Judge of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Lois Chaffee, Petitioner, hereby respectfully applies for an extension of time within which to apply for a writ of certiorari in the above-entitled cause from February 10, 1966, to and including April 11, 1966. If an extension is granted, Petitioner will apply for permission to petition *in forma pauperis*. Such permission was granted for the appeal below.

Petitioner seeks review of a decision of the Court of Appeals for the Fifth Circuit in which judgment was entered on November 12, 1965. The time for filing petition for a writ of certiorari expires on February 10, 1966. The jurisdiction of this Court rests upon 28 U.S.C. § 1254.

The Court of Appeals decision of which review is sought affirmed a judgment of the District Court for the Southern District of Mississippi, denying Petitioner's motion for a temporary injunction against the state perjury prosecution which Petitioner sought to have permanently enjoined under the Civil Rights Act. The perjury prosecution was based on testimony which Petitioner, a civil rights worker, had given at her own trial for disturbing the peace, and the testimony concerned alleged police brutality against certain civil rights demonstrators. The perjury prosecution was commenced and vigorously pushed by Respondent Russell D. Moore, III, the presiding judge at the state disturbing the peace trial. At the district court hearing below, counsel for Petitioner was not permitted to present evidence to show the die-hard segregationist views of Judge Moore and the other respondents and the causal relationship between those views and this prosecution. Counsel was, therefore, not permitted to show that Judge Moore was in large part responsible for circulating the infamous "go to jail petition" which was circulated at the time of the James Meredith situation and which pledged public officials and employees of the State of Mississippi to "go to jail" rather than obey federal court desegregation orders.

If this application is granted, Petitioner intends to raise the following questions in her petition for certiorari:

(1) Do the principles enunciated by this Court in Dombrowski v. Pfister, 380 U.S. 479 (1965), require reversal in this case because the state perjury prosecution of Petitioner has no reasonable probability of ultimate success and will, if allowed to proceed, deprive civil rights groups and their members of meaningful trials by depriving them of access to witnesses?

(2) Even if this Court finds that a "proceeding in a state court" has been commenced for purposes of 28 U.S.C. § 2283, is not a suit under 42 U.S.C. § 1983 a statutory exception to the rule of § 2283?

(3) Is it not error, requiring remand for a new hearing, for a Federal Court of Appeals to affirm the denial of a temporary injunction on the basis of a district court record compiled prior to Dombrowski and therefore without the guidance afforded by awareness of the principles developed in that case?

Petitioner intends to show that the principles of Dombrowski apply here (a) because the rights at stake are similar in their sensitivity to the First Amendment rights vindicated in Dombrowski and (b) because there is no substantial likelihood of success in the prosecution. It is doomed to failure for a number of legal reasons independent of the facts to be determined at the criminal trial, and therefore the grant of an injunction would not involve a substitute for a state criminal trial.

Petitioner will argue that any conviction will be subject to reversal as a matter of law for three basic reasons: (a) The complete statutory exclusion of women from service upon Mississippi juries (both grand and petit) invalidates the perjury indictment in this case under the Fourteenth Amendment, and Petitioner, a woman, will be able eventually to secure reversal on that point. This question is currently before the United States District Court for the Middle District of Alabama in White v. Cook, No. 2263-M, M. D. Ala., Northern Division.

(b) The constitutionally protected interest in access to the courts, as expressed in the First and Sixth Amendments and applied to the states through the Fourteenth, requires higher standards of (i) materiality of the alleged falsehood to the trial at which it was given, (ii) specification in the indictment of the materiality of the alleged falsehood, and (iii) probable cause to support an indictment and prosecution than was present in this case.

(c) The prosecution violates Fourteenth Amendment due process because of the role of the trial judge in instigating and vigorously pressing the prosecution and because the prosecution was commenced under a statute (Miss. Code of 1942 § 1762) which makes the trial judge both prosecutor and judge for purposes of initiating and finding probable cause for a perjury prosecution and which permits the setting of bail without notice or hearing.

The instant complaint contains allegations, indistinguishable from those presented in Dombrowski (1) that the instant prosecution was commenced without probable cause and for the improper purposes of punishing Petitioner for her activities as a civil rights worker, of suppressing civil rights activity, and of suppressing criticism of local police behavior toward civil rights demonstrators, (2) that the prosecution has no likelihood of leading to a valid conviction, and (3) that if a state perjury trial is held before the constitutionality of the prosecution is ruled upon, irreparable injury will be done, regardless of its outcome, to freedom of speech and to the judicial process in Mississippi federal and state courts, for witnesses, who are already extremely reluctant, will become completely unwilling to testify on behalf of civil rights workers for fear that a perjury prosecution may be commenced against them.

The need for an early opinion explaining the as yet roughly-defined contours of Dombrowski is demonstrated by reference to Cameron v. Johnson, 381 U.S. 741 (1965), in which the Court remanded the case to the district court in which this case began for a ruling on the apparent conflict between 42 U.S.C. § 1983 and 28 U.S.C. § 2283.

Since this will be an in forma pauperis petition, counsel working on the case are all volunteers. Counsel for Petitioner has been laboring under the burden of a great deal of other work and has been greatly delayed because of the recent transit strike in New York City. In addition, delay has been encountered in obtaining a certified copy of the record due to the fact that the record was returned to the district court before counsel for Petitioner gave notice that review would be sought. The record has not yet been received by counsel, and incorporation of page references would therefor be impossible at this time.

WHEREFORE, it is respectfully requested that the time within which to petition for a writ of certiorari in the above-entitled case be extended to and including April 11, 1966.

Dated: February 8, 1966.

Paul O'Dwyer
Counsel for Petitioner

Reasons for Granting the Writ

I

The decision of the court below is in conflict with the principles upon which the Court based its decision in Dombrowski v. Pfister, supra, that certain state prosecutions should be permanently enjoined and that a federal trial should be held on the question of whether certain other prosecutions (threatened, but not commenced) should also be enjoined under 42 U.S.C. § 1983. Dombrowski involved a situation in which the state prosecutions initiated and threatened had a "chilling effect on free expression" (380 U.S. at 487) and in which "defense of the State's criminal prosecution . . . [would] not assure adequate vindication of constitutional rights" (Id. at 485). The present case involves a situation in which a perjury prosecution has been commenced which has had and continues to have the effect of intimidating civil rights workers and Negroes in Mississippi by making them afraid that if they actively advocate civil rights activities, they may be arrested and unable to defend themselves in court for lack of testimony. Defense testimony will be (and is) unavailable because this prosecution and other ill-founded perjury prosecutions arising out of civil rights cases are well-known to Mississippi civil rights workers and Negroes, and these people are, simply and understandably, unwilling to testify in civil rights cases for fear that their testimony will result in a perjury prosecution, successful or not. Thus, the instant prosecution has a "chilling effect" upon freedom of speech (to the extent that the ~~Final~~ First Amendment applies to statements made under oath) and upon due process of law in both federal and state courts in Mississippi because it has serious adverse effects upon the availability of testimony.

In Dombrowski the prosecutions were attacked by allegations ("not clearly frivolous" 380 U.S. at 490):

(a) that they were highly unlikely to lead to valid convictions and were, in fact, not expected to lead to such convictions,

(b) that they were lacking in factual "probable cause,"

(c) that they were brought in bad faith for the purpose of intimidating and harassing advoca~~a~~tes of civil rights for Negroes, and

(d) that they were based upon statutory provisions unconstitutional on their face.

The present prosecution is attacked upon much the same grounds. In Dombrowski the existing prosecutions were unlikely to lead to valid convictions because the criminal statutes upon which the indictments rested were rather clearly unconstitutional on their face under Baggett v. Bullitt, 377 U.S. 360 (1964). In the present case the indictment is unlikely to lead to a valid conviction for any or all of the following reasons (other than lack of proof):

(a) it was returned by a grand jury from which women were systematically and completely excluded by operation of local statutory law (cf. United States v. Ballard, 329 U.S. 187 (1946), in which systematic exclusion of women from federal juries was held to be arbitrary and contrary to law),

(b) it is invalid on its face as contrary to the constitutional principles of Russell v. United States, 367 U.S. 749 (1962), because it fails to state the purpose or nature of the state trial and thus precludes a judicial ruling on the materiality of the allegedly perjured statements,

(c) the prosecution was commenced under a statute (§ 2479, Miss. Code) unconstitutional on its face because it permits the

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judge who initiates a perjury charge to act both as prosecutor and as judge in ruling upon the existence of "probable cause" for the charge and upon the amount of bail, and

(d) the prosecution was commenced under a statute (§ 2479, Miss. Code) which is void-for-vagueness because it permits a witness to be imprisoned or subject to bail whenever a state trial judge concludes that a witness before him "has testified in such manner as to induce a reasonable presumption that he has wilfully and corruptly testified falsely to some material point or matter."

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Thus the present case presents a situation, like Dombrowski, in which considerations apart from the factual substance of the state prosecution may be dispositive.

Like Dombrowski, this case involves "special circumstances" related to freedom of expression and to due process of law which justify prompt determination of the issues involved. As this Court stated in Dombrowski, it has, "in effect, avoided making vindication of freedom of expression await the outcome of protracted litigation"

(380 U.S. at 487). Here a young woman is being prosecuted because of testimony given in her own defense in which she criticized the behavior of Mississippi policemen and charged them with using their billyclubs in a brutal fashion. The prosecution, which has a suppressive effect upon testimony, is subject to serious question upon First and Fourteenth Amendment grounds. "Substantial losses of freedoms of expression will occur" and serious harm will be done to the administration of justice in federal and state civil rights cases in Mississippi if Petitioner "must await the state court's disposition and ultimate review by this Court of any adverse determination" (380 U.S. 485-86).

in numerous newspapers throughout the Mississippi State, in writing of
this event and substantive eye-witness support to her
statement. At the time she gave this testimony she was testifying
at her own trial for breach of the peace (at present on appeal, and while

Petitioner does not seek a federal trial on the question of her guilt or innocence of perjury or upon the truth or falsehood of her allegedly perjured statements. She does seek a ruling under 42 U.S.C. § 1983 upon the constitutionality of the indictment against her and, if it should prove necessary, a federal hearing prior to the state perjury trial upon the questions of bad faith and lack of probable cause in the prosecution.

The Dombrowski decision is one of great national importance, since it bears directly upon the meaning and vitality of the First and Fourteenth Amendments,

~~no less~~ ~~[illegible]~~ not part of this petition, is no less improper) It would seem rather obvious to anyone, particularly a judge, that observations of Miss Chaffee, true or false, as to what the police were doing to other persons, were irrelevant as to whether she committed a breach of the peace. If irrelevant, no grounds exist to convict her ~~of a charge~~ for perjury, even if what she said were false, which it is not. ~~Judge Moore~~ At no time ~~were~~ was counsel permitted to show the die hard ~~segrega~~ absolute segregationist views of Judge Moore; Counsel was not permitted to show he ~~That he~~ was in large part responsible for the infamous "go to jail" petition which would have pledged that employees of the State of Mississippi go to jail rather than obey federal courts orders in the well known James Meredith situation. Nor were we allowed to Judge Moore's connection with the White Citizens Counsel. Had we been allowed to show these views of Judge Moore, and the other defendants, the reasons for the desire to prosecute a white civil rights worker from Kellogg, Idaho who had moved to Mississippi to help Negroes achieve equality would have become ~~so~~ readily apparent. By now it is well-known that that the feeling against the outsider, the white civil rights worker is well known, Schwerner

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upon the meaning of the federal civil rights statutes, and upon one of the fundamental problems of judicial federalism: Under what circumstances should a federal court enjoin a state prosecution? (The meaning of Dombrowski should be made clear. (See dissenting opinions in Cameron v. Johnson, 381 U.S. 741 (1965).)

II

Because the present action was begun after the state indictment was returned, this case presents vital questions not decided in Dombrowski: Does 42 U.S.C. § 1983 constitute a statutory exception to 28 U.S.C. § 2283 and authorizes federal injunctions against state prosecutions in progress when the federal action was begun? Does (a) the return of an indictment or (b) the beginning of trial mark the commencement of "proceedings in a State court" within the meaning of § 2283?

Repeated examples of unfounded prosecutions against civil rights activists in the South (of which the Dombrowski case is only one, see Lusky, "Racial Discrimination and the Federal Law: A Problem in Nullification," 63 Colum. L. Rev. 1163 (1963); Friedman (ed.), Southern Justice, pp. 181-185); Shuttlesworth v. Birmingham, ___ U.S. ___, 15 L.Ed.2d 126 (Nov. 15, 1965), have underscored the necessity for clarification of the law as to the existence of a federal remedy against violation of civil rights through abuse of the prosecutorial function. In Cameron v. Johnson, 381 U.S. 741 (1965), this Court remanded the case to the Southern District of Mississippi for a ruling on the relationship between sections 1983 and 2283 in light of Dombrowski. The dissenting opinions in that case point out the importance of this question. (As an alternative to her request that this Petition be granted, Petitioner requests that disposition of this Petition be held back pending final adjudication of the question remanded in Cameron v. Johnson.)

Chaffee

STATE OF NEW YORK)
COUNTY OF NEW YORK) SS.;

AFFIDAVIT

CARL RACHLIN, being duly sworn, deposes and says:

I am a member of the Bar of the State of New York since 1941. I am also a member of the Bar of the United States Supreme Court, the Second and Fifth Circuit Court of Appeals, and the United States District Courts for the Southern and Eastern Districts of New York.

I have been General Counsel to the **CONGRESS OF RACIAL EQUALITY** since 1960 and on numerous occasions have tried to obtain the assistance of members of the Bar in some of the southern communities where the **CONGRESS OF RACIAL EQUALITY** was active in Civil Rights work.

In or about late October or November of 1963 a young white woman working for the **CONGRESS OF RACIAL EQUALITY** in and near Jackson, Mississippi was bound over and held by the direction of Judge Russell Moore, then of the Hinds County Court, sitting in Jackson, for perjury. She was eventually indicted for perjury. At one point she called me in New York and asked me to obtain legal assistance for her in view of the seriousness of the charge, despite as she said, her clear innocence. It was her thought that because of this seriousness that the attorneys in Jackson who normally handled Civil Rights matters might not have sufficient experience to handle this kind of a case. I told her I would do everything possible to help her.

Shortly thereafter, and in pursuance of this request from Lois Chaffee, I called Mr. John Sattersfield at his office in Yazoo City. I had known, of course, that Mr. Sattersfield had been president of the American Bar Association. In fact, the Dean of my law school, Dean Griswold, had at one time suggested that

Mr. Sattersfield might be helpful in obtaining counsel in some of the Civil Rights cases in Jackson. I had met Mr. Sattersfield somewhat hastily one day in Jackson through a mutual acquaintance.

I was able to reach Mr. Sattersfield and I discussed the problem of Lois Chaffee with him. His first question to me was, in substance, Who told you to call me? I was somewhat taken aback by this question but I went on to add that Miss Chaffee herself had asked me to obtain legal assistance for her. We discussed the case in some further detail and I then asked him if I could raise a sufficient sum to pay a fee would he undertake her defense. I made it very clear that I did not expect him to handle this as a volunteer. After some further discussion he told me that he was not able to undertake the case. I then asked him could he recommend me to any lawyer who would undertake this case and defend Miss Chaffee. He told me that he could not recommend any lawyer who would help me.

Sometime after that, not knowing where to turn, I called upon the Honorable Paul O'Dwyer to represent Miss Chaffee. He agreed to do so and not long thereafter an action was brought in the Federal Court to restrain the state prosecution herein for perjury. This matter is now actively pending in the Fifth Circuit Court of Appeals.

Carl Rachlin

CARL RACHLIN

Sworn to before me this

17th day of June 1965.

Rita L. Carrington

RITA L. CARRINGTON
NOTARY PUBLIC, State of New York
No. 41-0581325
Qualified in Queens County
Cert. filed in New York County
Term Expires March 30, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE,

Plaintiff, :

CIVIL ACTION
No. ________

-against-

PAUL R. JOHNSON, JR., individually, etc., :
et al.,

AFFIDAVIT

Defendants.

STATE OF MISSISSIPPI)
) ss.:
COUNTY OF HINDS)

LOIS CHAFFEE, being duly sworn, deposes and says:

I am the plaintiff in the above action. I make this affidavit in support of the complaint and the request for interlocutory relief and for a temporary restraining order against the defendants.

I am a citizen of the United States and of the State of Idaho. I am presently awaiting trial under an indictment returned by a Grand Jury of the First Judicial District of Hinds County, Mississippi, charging me with "wilfully, falsely and curruptly" testifying while "under oath as a witness in a trial upon an affidavit charging a misdemeanor in Hinds County, Mississippi," on October 15, 1963.

I am and was, at all times relevant to this action, engaged as an employee of the Congress of Racial Equality (CORE) in working to encourage Negroes in the State of Mississippi to attempt to exercise their right to vote, to freedom of association, to free expression of opinion, and to peacefully petition for redress of grievances.

The defendants herein, under color of certain laws, statutes, regulations, customs, and usages of the State of Mississippi and in furtherance of the State's official policy of rigid racial segregation and the denial to many Negroes of the right to vote and other civil rights, have entered into a plan or conspiracy, which is believed to involve all of them and certain persons presently unknown to me, the purpose, intended effect, and actual effect of which is to intimidate, threaten, and punish me unjustly and without cause and to make me fearful of testifying in my own defense in the prosecution which the defendants have brought against me for perjury.

Such conspiracy and all acts by the defendants pursuant thereto are intentional and constitute violations of rights, privileges and immunities granted to me by the Constitution and laws of the United States. The purpose, intended effect, and actual effect of such conspiracy is also to discourage me and others of my class (as workers in behalf of equal rights for Negroes and Whites in Mississippi and for the general improvement of the status of the Negro in that State) from continuing our efforts in exercise of our rights to freedom of speech and of association.

On October 15, 1963, at a trial in Hinds County Court, Hinds County, Mississippi, at which I was tried and convicted by an all white jury of disorderly conduct in violation of a local ordinance of the City of Jackson, Mississippi, defendant, Judge Russell D. Moore, III, pursuant to the conspiracy charged in the complaint herein, instructed defendant Jack Travis to prosecute me for perjury.

Apparently, the reason for those instructions was a belief on the part of defendant, Judge Russell D. Moore, III, that testimony given by me conflicted or was in conflict or at variance with testimony given by defendant, Deputy Chief of Police J. L. Ray, and other prosecution witnesses.

No reasonable basis exists for the charge made in the indictment against me that I "wilfully, falsely and corruptly" said under oath the three things quoted in that indictment, inasmuch as all of the testimony given by me at my trial on October 15, 1963, was given candidly, honestly, in good faith, and in the sincere belief that everything I said was completely true and not false in any way whatever.

In furtherance of the conspiracy among them, the defendants have threatened to prosecute and have prosecuted me and are continuing to prosecute me for perjury and, thereby, to intimidate, threaten and punish me unjustly.

I, CORE, and the members, friends and supporters of CORE have been attempting, through peaceful and non-violent means, to achieve the elimination of all forms of racial discrimination and Segregation in the South and in the

State of Mississippi and to encourage Negro citizens to exercise their rights to register and to vote in Federal and State elections. Those objectives are specifically protected and guaranteed by the First, Fift~~y~~d, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States and by Sections 1971, 1981, 1983, 1985, and 1986 of Title 42, United States Code. In our constant efforts to achieve our objectives, I, Core, and the members, friends and supporters of CORE have been attempting to exercise rights guaranteed under the First and Fourteenth Amendments to freedom of speech, press, assembly and association and our rights to assemble, associate, and to petition for redress of grievances. It is solely because of my efforts in this connection that the defendants have conspired to prosecute me for perjury.

Unless this court grants the relief prayed for in the Order to Show Cause and Complaint to which this affidavit is attached, I will unquestionably continue to suffer serious, immediate, present, and irreparable injury. My trial for perjury has been set for March 23, 1963, and my attorneys, Paul O'Dwyer, Esq., of New York, New York, and ~~Jack Young, Esq.~~ R. Jess Brown, of Jackson, Mississippi, inform me that, because that trial was unexpectedly set weeks earlier than they had anticipated and because of the time it has taken them to bring this action, they cannot possibly be prepared for trial in the State Court on that date.

Sworn to before me, this)
)
day of March, 1964.)

Lois Chaffee

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE,

Plaintiff, :

CIVIL ACTION
No.
3535 (J)(M)

-against-

PAUL R. JOHNSON, JR., individually and :
as Governor of the State of Mississippi,
JOE T. PATTERSON, individually and as
Attorney General of the State of
Mississippi, LEON F. HENDRICK, in- :
dividually and as Judge of the Seventh
Circuit of the State of Mississippi,
RUSSELL D. MOORE, III, individually and
as Judge of the County Court for Hinds :
County, Mississippi, WILLIAM L. WALLER,
individually and as District Attorney
for the Seventh District of the State of
Mississippi, ALLEN THOMPSON, individual- :
ly and as Mayor of the City of Jackson,
Mississippi, JACK TRAVIS, individually
and as Prosecutor for the City of
Jackson, Mississippi, W. D. RAYFIELD, :
individually and as Chief of Police of
the City of Jackson, Mississippi, J.L.
RAY, individually and as Deputy Chief
of Police of the City of Jackson, :
Mississippi, and ROSS R. BARNETT,

Defendants.

ORDER TO SHOW CAUSE

NOW on the attached affidavit of LOIS CHAFFEE, duly sworn to the   day of March, 1964, the summons and complaint herein, it is hereby

ORDERED that the defendants herein show cause before this Court on the   day of March, 1964, why an interlocutory order should not be entered restraining the defendants herein from proceeding in any way with the prosecution and/or imprisonment of plaintiff, LOIS CHAFFEE, for perjury as a result of testimony given by her at a trial held in Hinds County Court, Hinds County, Mississippi, on October 15, 1963, and from arresting or having indicted any other person of her class for perjury merely upon the basis of a conflict between the testimony of such person and other witnesses at a trial in the Courts of the State of Mississippi; and for good cause shown; it is hereby further

ORDERED that, pending the return, hearing, and determination of this Order to Show Cause, the defendants herein be and they hereby are restrained from proceeding in any way with the prosecution and/or imprisonment of plaintiff LOIS CHAFFEE for perjury; and it is further

ORDERED that this temporary restraining order shall expire by its own terms ten days from this date unless extended for an additional ten day period for good cause shown; and it is further

ORDERED that service of this Order to Show Cause by personal service or by leaving it at the place of business of each of the defendants by   o'clock in the   -noon of the   day of March, 1964.

SO ORDERED.

United States District Judge.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

---x

LOIS CHAFFEE,

Plaintiff,

-against-

PAUL R. JOHNSON, JR., individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT,

Defendants.

CIVIL ACTION
NO.__________

---x

Note: Omit bracketed portions

COMPLAINT

To the Honorable Judges of the United States District Court for the Southern District of Mississippi, Jackson Division:

Plaintiff, by her attorneys, respectfully alleges:

Jurisdiction of the Court

1. Plaintiff, a citizen of the United States and of the State of Idaho, brings this civil action seeking [damages caused by and] an injunction and other equitable relief to enjoin the deprivation, [by a conspiracy] under color of the

omit

laws, statutes, ordinances, regulations, customs, and usages of the State of Mississippi, and its political and judicial subdivisions, of rights, privileges, and immunities guaranteed her by the Constitution of the United States and by various statutes thereof, including, 42 U.S.C. § 1985, 42 U.S.C. § 1983, 42 U.S.C. § 1981, and 42 U.S.C. § 1986. Jurisdiction of this Court is founded upon the appropriate provisions of 28 U.S.C. § 1343, 42 U.S.C. § 1985, 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1332, and under the Constitution of the United States, and in particular under the First, Fifth, Sixth, Eighth, Thirteenth, Fourteenth and Fifteenth Amendments thereto.

omit ¶ 2

2. Plaintiff brings this action on her own behalf as well as on behalf of each and all other persons similarly situated who are workers for the end of racial discrimination and segregation in Mississippi, for the encouragement of the exercise by Negroes in Mississippi of their right to vote and to register to vote, and for the exercise and preservation of civil rights generally in Mississippi, whether such other persons are paid or not paid to act as such workers. Such persons are so numerous as to make it impracticable to bring them all before this Court; and the rights to speak freely in opposition to racial segregation, to be free to testify candidly in judicial proceedings, and to speak and associate for the purpose of encouraging Negroes to exercise their right to vote, and the right to redress in the federal courts for violation of such rights, which are, in part, the subject of this action, are common to all members of the class of civil rights and voter registration workers, advocates, and supporters in the State of Mississippi.

3. Hinds County, Mississippi, the Seventh Circuit of the State of Mississippi, and the City of Jackson, Mississippi, are all located within this judicial district, and all of the defendants are believed to reside therein. All of the defendants are citizens of the State of Mississippi.

4. The amount in controversy, exclusive of interest and costs, exceeds the sum or value of $10,000.

Parties

5. Plaintiff, Lois Chaffee, is a citizen of the United States and of the State of Idaho. She is presently awaiting trial under an indictment returned by a Grand Jury of the First Judicial District of Hinds County, Mississippi, charging her with "wilfully, falsely and corruptly" testifying while "under oath as a witness in a trial upon an affidavit charging a misdemeanor in Hinds County, Mississippi," on October 15, 1963. A copy of said indictment is attached hereto as Exhibit A. She is and was, at all times hereinafter mentioned, engaged as an employee of the Congress of Racial Equality, in working to encourage Negroes in the State of Mississippi to attempt to exercise their right to vote, to free expression of opinion, to gather and peacefully petition for redress of grievances, and other civil rights.

6. Defendant, Paul R. Johnson, Jr., is the Governor of the State of Mississippi. He took office in January 1964. He is sued individually and in his capacity as Governor of that State. He is a citizen of Mississippi.

7. Joe T. Patterson is and was, at all times hereinafter mentioned, the Attorney General of the State of

Mississippi. He is sued individually and in his capacity as Attorney General of that State. He is a citizen of Mississippi.

8. Leon F. Hendrick is and was, at all times hereinafter mentioned, Judge of the Seventh Circuit of the State of Mississippi. He is sued individually and in his official capacity as a Judge of the State of Mississippi. He is a citizen of Mississippi.

9. William L. Waller is and was, at all times hereinafter mentioned, District Attorney for the Seventh District of the State of Mississippi. He is sued individually and in his official capacity as such District Attorney. He is a citizen of Mississippi.

10. Allen Thompson is and was, at all times hereinafter mentioned, Mayor of the City of Jackson, Mississippi. He is sued individually and in his official capacity as Mayor of that City. He is a citizen of Mississippi.

11. Jack Travis is and was, at all times hereinafter mentioned, Prosecutor for the City of Jackson, Mississippi. He is sued individually and in his official capacity as Prosecutor of that City. He is a citizen of Mississippi. He prosecuted the plaintiff at her trial for disturbing the peace before defendant, County Judge Russell Moore and is believed to have obtained the indictment of plaintiff for perjury upon instructions from said defendant, Judge Moore.

12. W. D. Rayfield is and was, at all times hereinafter mentioned, Chief of Police of the City of Jackson, Mississippi. He is sued individually and in his official capacity as Chief of Police of that City. He is a citizen of Mississippi.

13. J. L. Ray is and was, at all times hereinafter mentioned, Deputy Chief of Police of the City of Jackson, Mississippi. He is sued individually and in his official capacity as Deputy Chief of Police of that City. He is a citizen of Mississippi.

14. Ross R. Barnett was, at all times hereinafter mentioned until some time in January, 1964, Governor of the State of Mississippi. He is a citizen of the State of Mississippi, and is sued individually.

15. Russell Moore is and was, at all times hereinafter mentioned, a Judge of the County Court of Hinds County, Mississippi. He is sued individually and in his official judicial capacity. He presided at the trial of the plaintiff for disturbing the peace and prompted her prosecution for perjury.

Statement of Claims

16. (a) During the night of June 11, 1963, Medgar Evers, an employee of the National Association for the Advancement of Colored People (NAACP) and a well-known worker for civil rights in Jackson, Mississippi, was murdered in Jackson. On June 13, 1963, during the forenoon, a silent and orderly march of mourning and protest was undertaken on Pearl and Rose Streets in Jackson by a group of Negro Students, many of whom carried American flags. The police admitted that they knew of no plans which the students may have had which in any way constituted breach of the peace, nor were the persons boisterous or unruly. In fact, they were silently carrying American flags.

(b) They were met, on Rose Street, near the corner of Rose and Deer Park Streets at a point where Hart's Bakery is on one side of the street and the home of Mrs. Margaret Myles is on the other, by a large contingent of men wearing helmets and uniforms, armed with various firearms, and carrying wooden clubs known as "billy clubs" or "billies." These men were supervised and directed in their various activities by defendant, Deputy Chief of Police, J. L. Ray, who used a portable loudspeaker known as a "bull horn" for that purpose. They appeared to be members of the Jackson Police Force, and will be referred to hereafter as "policemen."

(c) At the place on Rose Street where the policemen met the silent marchers, some people, many of them Negroes, had gathered. Paddy wagons and trucks normally used for the disposal of garbage were parked and waiting.

(d) When the flag-carrying marchers and the policemen met, a scene of great confusion and violence was the result. Only the general outline of that scene and a number of individual incidents can be reconstructed with any accuracy.

(e) One group of policemen without the slightest provocation surrounded the marchers, moved in on them, arrested them, took the American flags from those who had them, and loaded the marchers into the waiting trucks. Some of the marchers resisted the taking of the flags from them, perhaps under encouragement from persons in the surrounding crowd, and the police forceably wrested the flags and used sufficient force, including blows, to overcome the resistance of those who held tightly to the sticks of their flags. (See statement of John Young attached hereto as Exhibit B) Plaintiff was standing on the ground, near the place where the marchers were being arrested when another group of policemen advanced upon the crowd and then charged into it, some of them swinging their billy clubs. As the policemen advanced, plaintiff did not join in the chanting of "Freedom" and other things which was being done by some of those around her in the crowd, but rather advised those near her to remain silent because of threats of arrest being made by defendant, Deputy Chief of Police, J. L. Ray over his bull horn.

(f) As the policemen advanced toward the crowd, a part of it was crowded up against the house of Mrs. Margaret Myles, where Reverend R. Edwin King and John R. Salter, Jr., both of the staff of Tougaloo Southern Christian College (Tougaloo College) in Tougaloo, Mississippi, were standing on the porch, along with a number of other people from the crowd and two of Mrs. Myles' children, Carolyn and Tommy.

(g) Before the police charged, Reverend King took his wife, who had been standing on the Myles porch with him, into the house. He later returned to the porch. Mr. Salter or Reverend King, each of whom knew the plaintiff from Tougaloo College, where she had taught English during the previous school year, called her up on the porch as a safety measure. When the police charged, plaintiff was on or somewhere very near the Myles porch or the steps thereof. Plaintiff, Salter and King were the only white persons on the porch.

(h) During the police charge, Mr. Salter was set upon by a numberof policemen with billy clubs and beaten into unconsciousness by blows on the head which caused lacerations that bled profusely and required a number of stitches when medical treatment was finally administered. (See affidavit of John P. Salter, Jr., attached hereto as Exhibit C and attachments thereto.) Mrs. Myles' fifteen year old daughter, Carolyn was apparently struck on the head by a policeman's billy club. She became hysterical and sat in the doorway of the house screaming with fear. Plaintiff undertook to aid the screaming child and called for the policemen to do something to aid the child, This aid was refused.

(i) When the policemen charged the crowd, what had been confusion became pandemonium and panic, as terrified members of the crowd - on the porch and elsewhere — attempted to flee the police and their clubs.

(j) In the course of the confusion subsequent to the charge of the police on the Myles porch, plaintiff was arrested by some of the policemen, under instructions from defendant Deputy Chief of Police J. L. Ray, and charged with causing a disturbance in a public place in violation of Section 2090.5 of the Mississippi Code. The charge was subsequently changed to that of disorderly conduct in violation of a local ordinance of the City of Jackson.

(k) At a trial held on October 15, 1963, plaintiff was found guilty by an all white jury in the Hinds County Court, First Judicial District, Hinds County, Mississippi, of disorderly conduct. Defendant Judge Russell D. Moore, III, presided at that trial. The issue of the trial concerned whether plaintiff had used chanting language urging student marchers to retain their flags. Much testimony, however, was adduced as to police brutality at the scene. It was such testimony, utterly irrelevant to the issue in that trial, which is the subject of the present indictment for perjury.

(l) After the jury in that case returned its verdict, the presiding judge, defendant Judge Russell D. Moore, III, instructed the prosecuting attorney, defendant Jack Travis, to obtain an indictment by a Grand Jury for perjury against this plaintiff (defendant therein), apparently because of what Judge Moore regarded as a conflict between the testimony of the plaintiff (testifying in her own defense) and that of defendant Deputy Chief of Police J. L. Ray and one of the other policemen present during the arrests on Rose Street (testifying for the prosecution). Although not relevant to his trial he predetermined her case and assumed she lied, although he must have known of the acts of brutality committed by the police.

(m) An indictment was returned by a Grand Jury during the November, 1963, term of the Circuit Court for the First Judicial District of Hinds County, Mississippi, the basis for which is unknown to the plaintiff, charging her with "wilfully, falsely and corruptly" making three quoted statements while "under oath as a witness in a trial upon an affidavit charging a misdemeanor in Hinds County Court, First Judicial District, Hinds County, Mississippi, cause number 13794." A copy of that indictment is attached hereto as Exhibit A. All three of the allegedly false statements relate to the use of force by the arresting policemen during the arrests on Rose Street.

17. No reasonable basis exists for the charge made in the indictment that plaintiff "wilfully, falsely and corruptly" said the three things quoted therein. (See affidavit of Lois Chaffee and Exhibits A through attached hereto.)

18. Upon information and belief, in obtaining the indictment of plaintiff and otherwise prosecuting her for disorderly conduct and perjury, defendant Jack Travis was acting either pursuant to the direction and instructions of some or all of the other defendants or otherwise in conspiracy with them to deprive plaintiff of rights secured to her by the United States Constitution and federal statutes cited in paragraph "1" above and elsewhere herein.

19. Plaintiff and the members, friends and supporters of the Congress of Racial Equality (CORE) have been attempting, through peaceful and non-violent means, to achieve the elimination of all forms of racial discrimination and segregation in the South and in the State of & La Mississippi and to assist and encourage Negro citizens to exercise their rights to register and to vote in federal and state elections. Those objectives are specifically protected and guaranteed by the First, Fifth, Thirteenth, Fourteenth and Fifteenth Amendments to the Constitution of the United States and by Sections 1971, 1981, 1983, 1985 and 1986 of Title 42, United States Code. In their constant efforts to achieve their objectives, plaintiff and the members, friends and supporters of CORE have been attempting to exercise rights guaranteed under the First and Fourteenth Amendments to freedom of speech, press, assembly and association and their rights to assemble, associate, and petition for redress of grievances.

20. The defendants herein, under color of certain laws, statutes, ordinances, regulations, customs, and usages of the State of Mississippi, and in furtherance of a policy of (that State's well-known official policy of rigid] racial

segregation and the denial to many Negroes of the right to vote and peacefully to assemble, have[entered into and a plan or conspiracy involving all of them and other persons presently unknown to the plaintiff the purpose and intended effect of which is) undertaken to intimidate the plaintiff and to punish her unjustly and without cause in violation of rights, privileges, and immunities granted to her by the Constitution and laws of the United States and in particular by the First, Fifth, Sixth, Eighth, Thirteenth, Fourteenth, and Fifteenth Amendments thereto, and thereby to discourage plaintiff and others of her class (as workers in behalf of equal rights for Negroes and whites in Mississippi and for the general improvement of the status of the Negro in that State) from continuing their efforts.

21. The prosecution of plaintiff were undertaken [as part of a conspiracy among the defendants] to deprive plaintiff, other workers for voter registration and civil rights generally in the State of Mississippi, and all of them as a class of their rights to freedom of speech, of assembly, of association and to petition for redress of grievances as guaranteed to them by the Constitution of the United States, for its manifest purpose is not only to discourage their efforts to persuade Negroes in Mississippi to register, to vote, and to exercise other civil rights, but also to discourage plaintiff and others of her class, when arrested, from speaking and testifying in their own defense - no matter how frivolous or unfounded the charges against them may be. If the prosecution of plaintiff by the defendants is permitted to proceed, all efforts to encourage and foster the exercise of civil

rights by Negroes in Mississippi will be adversely affected, for in every prosecution, founded or unfounded, for even the smallest charge, the defendant will be faced with the alternative of either saying nothing in his own defense or risking prosecution for perjury and a sentence of as long as ten years if his testimony should happen to conflict with that of the officers who arrested him.

22. The threat by conspiracy among the defendants to prosecute her for perjury violates her right, under the Fourteenth and Fifth Amendments to the Constitution of the United States, to due process of law, for the reason that the charge of perjury is totally without merit or substance and is designed by the defendant solely to intimidate the plaintiff and other workers for civil rights and voter registration in Mississippi as a class, to dissuade them from continuing their efforts, and to make them fearful of being unable to testify in their own defense without risk of long terms of imprisonment in the event of arrest.

mod ¶ 23

23. The prosecution of plaintiff by the defendants acting in conspiracy operates and is intended by the defendants to operate to deprive plaintiff of equal protection of the laws of the United States and of the State of Mississippi. It is a fact of which this Court can take judicial notice that the defendants and other authorities of the State of Mississippi do not make a regular and usual practice of prosecuting for perjury every person whose testimony at a trial for a minor offense conflicts with or is at variance with that of the arresting officers. The processes employed by the defendants in furtherance of their conspiracy are not the usual, orderly,

impersonal, legislative and criminal processes of the State of Mississippi. They are extraordinary, unusual, in excess of the official powers possessed by the defendants individually and collectively, and constitute an abuse of process, for the reason that their purpose and effect is to violate plaintiff's Constitutional rights.

omit

24. The threat of prosecution of the plaintiff by the defendants (in furtherance of their conspiracy) constitutes an attempt to impose a cruel and unusual punishment upon the plaintiff far beyond the bounds of just punishment for the minor offense of which she was originally accused in violation of rights guaranteed to her by the Eighth Amendment to the Constitution of the United States.

25. The prosecution of the plaintiff by the defendants [acting in conspiracy] constitutes an abuse by the State of Mississippi of its powers and by each and all of the defendants of their official powers as agents of that State and its subdivisions as those powers are limited by the Constitution of the United States and by the rights and privileges of the plaintiff created thereby, for that prosecution constitutes an unconsitutional application of the perjury laws of Mississippi to the plaintiff inasmuch as that prosecution is designed exlusively (a) to punish the plaintiff for having opposed the State of Mississippi's official and unofficial policies of racial segregation and discouragement of exercise by Negroes in that State of their right to vote and other civil liberties and (b) through such punishment to discourage others of

the plaintiff's class from undertaking to work on behalf of civil rights and voter registration in Mississippi.

and ¶26

26. The undated indictment issued by the Circuit Court of the First Judicial District of Hinds County, Mississippi, during the November term, A. D., 1963, a copy of which is attached hereto as Exhibit A, charging plaintiff with wilfully giving false and corrupt testimony "in a trial upon an affidavit charging a misdemeanor in Hinds County Court" on October 15, 1963, and the prosecution of plaintiff thereunder by the defendants and others acting in conspiracy threaten to deprive plaintiff of her liberty without due process of law and without adequately informing her of the nature and cause of the accusation against her in violation of her rights under the Sixth, Fourteenth, and Fifth Amendments to the Constitution of the United States, for the reason that said indictment does not inform the plaintiff of the statutes or law she is charged with having violated, of the nature of the "misdemeanor in HindsCounty" at the trial of which plaintiff was "under oath as a witness" when her allegedly false testimony was given, or of the material issue at that trial to which plaintiff's allegedly false testimony was relevant. Completely irrelevant testimony even if wilfully false, which the testimony of plaintiff was not, threatens harm neither to any person nor to any governmental body, is therefore completely innocuous, and thus cannot, without violation of Constitutional rights, be used as the basis for a felony prosecution.

27. Because plaintiff and CORE are presently engaged in a vigorous campaign to encourage qualified Negroes in Mississippi to register or Attempt to register to vote and because it is due in large measure to that campaign that the defendants have undertaken a conspiracy to prosecute plaintiff for perjury, the present prosecution will, regardless of its outcome, effectively intimidate such Negroes in the exercise of their right to vote and intimidate civil rights workers in Mississippi generally, of which class plaintiff is one, in the exercise of their rights to freedom of speech and of association.

28. The prosecution of plaintiff by defendants constitutes neither more nor less than a subversion by the State of Mississippi, through its various officials, the defendants, of its laws in order to maintain its segregation policy.

29. Because of the State of Mississippi's well-known and vigorously enforced policy of racial discrimination and segregation and because of plaintiff's identification with the causes of civil rights and voter registration for Negroes in that State, it will be impossible for plaintiff to receive either a fair and impartial trial or adequate remedies by way of appeal in the Courts of that State. This Court is, therefore, not merely a legally proper forum for determining the propriety of the charges brought against plaintiff (see statutes and Constitutional provisions cited in paragraph "1" above and elsewhere herein) but an absolutely necessary one.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE,

Plaintiff, :

-against-

Civil Action
No. 3535 (J)(M)

PAUL R. JOHNSON, JR., individually, :
etc., et al.,

Defendants.

PLAINTIFF'S MEMORANDUM IN SUPPORT OF HER PRAYER FOR AN INTERLOCUTORY INJUNCTION

Respectfully submitted,

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Attorneys for Plaintiff
Office & P.O. Address
50 Broad Street
New York 4, New York

R. JESS BROWN
Attorney for Plaintiff
125-1/2 North Farish Street
Jackson, Mississippi

Paul O'Dwyer,
of Counsel

INDEX

Page

Preliminary Statement 1

Facts of Which Judicial Notice Must be Taken And Authorities Relevant Thereto 3

United States v. Wood, 295 F. 2d 772 (5th Cir. 1961) 4

Bush v. Orleans Parish School Board, 194 F. Supp. 182 (E. D. La., New Orleans Div., 1961) 5

Graham v. Folsom, 200 U. S. 248 (1906). 5

Yakus v. United States, 321 U. S. 414 (1944). 7

Airport Parking, Inc. v. New Orleans Aviation Board, 185 F. Supp. 736 (E. D. La., 1960) 7

Perry v. Perry, 190 F. 2d 601 (D. C. Cir. 1951) 8

Bergen v. Parke, Davis & Company, 307 F. 2d 725 (3d Cir. 1962) 8

Durkin v. John Hancock Mutual Life Insurance Co., 92 F. Supp. 893 (S. D. N.Y. 1950). 8

There is Probable Cause to Believe That The Prosecution of Plaintiff For Perjury Violates Her Constitutional Right to Equal Protection of The Laws And That An official Conspiracy Is Involved. 9

(continuation)

Page

A Federal District Court Has Power To Grant A Temporary Injunction To Stay A State Criminal Prosecution Where A Threat of Immediate and Irreparable Injury Exists and Where A Substantial Question Has Been Raised As to The Constitutionality Of the Prosecution Under the Federal Civil Rights Statutes 18

1. Plaintiff has properly invoked the jurisdiction of this Court 18

Douglas v. Cityof Jeannette, 319 U. S. 157 (1943) 18

Bell v. Hood, 327 U. S. 678 (1946) 18

Bock v. Perkins, 139 U. S. 628 (1891) 18

Hague v. Committee for Industrial Organizations, 307 U. S. 496 (1939) 18

Bailey v. Patterson, 323 F. 2d. 201 (5th Cir. 1963) 18

Jordan v. Hutcheson, 323 F. 2d. 597 (4th Cir. 1963) 18

Aelony v. Pace, Harris v. Pace, (Civil Actions No. 530-1963 and 531-1963, 3 Judge Ct., M. D. Ga., Nov. 1, 1963). 18

Daniel v. Davis, 220 F. Supp. 601 (E. D. La., Eaton Rouge Div. 1963) 18

2. This Court has power to grant a permanent injunction if it is ultimately decided that the state prosecution here under attack violates plaintiff's constitutional rights. 18

(continuation)

	Pages
Aelony v. Pace, Harris v. Pace, supra,	19
United States v. Wood, supra,	19
Bailey v. Patterson, supra	19
City of Houston v. Dobbs Co., 232 F. 2d 428 (5th Cir. 1956)	19
Denton v. City of Carrollton, 235 F. 2d. 481 (5th Cir. 1956)	19
Bush v. Orleans Parish School Board, supra	19
Browder v. Gayle, 142 F. Supp. 707 (M. D. Ala., No. Div., 1956), aff'd, 352 U. S. 903 (1956), rehearing denied, 352 U. S. 950 (1956), 352 U. S. 955 (1956)	19
Louisiana ex rel Gremillion v. NAACP, 181 F. Supp. 37 (E. D. La., New Orleans Div., 1960) aff'd, 366 U. S. 293 (1961)	19
Morrison v. Davis, 252 F. 2d. 102 (5th Cir. 1958)	19
Jordan v. Hutcheson, supra,	19
Moore, Commentary on Judicial Code, pp. 408-9	19
A. F. of L. v. Watson, 327 U. S. 582 (1946)	19
Truax v. Reich, 239 U. S. 33 (1915)	19
Pierce v. Society of Sisters, 268 U. S. 510 (1925)	19
Terrace v. Thompson, 263 U. S.197 (1923)	19-20

(continuation)

Pages

Hague v. Committee for Industrial Organizations, supra, ... 20

Hynes v. Grimes Packing Co., 337 U. S. 86 (1949) 20

Cline v. Frink Dairy Co., 274 U.S. 445 (1939) 20

Hale v. Bimco Trading Co., 306 U.S. 375 (1939) 20

Browder v. Gayle, 142 F. Supp. 707 (M. D. Ala., No. Div. 1956) aff'd, 352 U. S. 903 (1956) 20

3. 28 U.S.C. § 2283 does not bar injunctive relief under the federal civilrights statutes in an appropriate case. 21

28 U.S.C. § 2283 21

42 U.S.C. § 1983 21

Aelony v. Pace, Harris v. Pace, supra, ... 21

Morrison v. Davis, supra, ... 21

Browder v. Gayle, supra, ... 21

United States v. Wood, supra 21

(continuation)

Pages

4. Where A Substantial Claim for equitable relief staying a state prosecution is stated under the federal civil rights statutes, the district court must grant an interlocutory order in order to prevent irreparable injury to constitutional rights and the mooting of plaintiff's claim. 22

United States v. Wood, supra 22

Jordan v. Hutcheson, supra, ... 23

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE,

Plaintiff,

-against-

PAUL R. JOHNSON, JR., individually, etc.
et al.,

Defendants.

Civil Action
No. 3535 (J)(M)

PLAINTIFF'S MEMORANDUM IN SUPPORT OF HER PRAYER FOR AN INTERLOCUTORY INJUNCTION

Preliminary Statement

In the Complaint herein, plaintiff prays for an interlocutory or temporary injunction, pending final adjudication of this action on the merits, restraining defendants, their agents, co-conspirators, and any other person or persons acting under their direction and control or in concert with them from continuing to prosecute plaintiff for perjury under any indictment arising out of her trial for disorderly conduct on October 15, 1963.

On April 20, 1964, a hearing was held in this Court for the purpose of receiving testimony on the question of whether or not an interlocutory injunction as prayed for in the Complaint herein should be granted.

Facts of Which Judicial Notice Must be Taken And Authorities Relevant Thereto

At the hearing on April 20, 1964, the Court refused to permit testimony offered by counsel for plaintiff for the purpose of showing that the prosecution sought to be enjoined has had and continues to have the intimidating effects intended by the defendants, namely -

(a) that of creating fear, apprehension, and a general feeling of intimidation which discourages civil rights workers and others of the public from giving testimony in defense of themselves and others where civil rights activity is a known factor in the case,

(b) that of intimidating civil rights workers in Mississippi generally by creating apprehension that if they continue or increase their efforts, they may be arrested and unable, because of the threat of an unjustified perjury charge, either to testify in their own defense or to find witnesses willing to testify for them, and

(c) that of intimidating Negroes in Mississippi and increasing their fears of attempting to exercise their right to vote and other civil rights by making an example of a well-known civil rights workers.

The prosecution of plaintiff for perjury will have the effects stated above regardless of its ultimate outcome. See United States v. Wood, 295 F. 2d 772, 280-285 (5th Cir. 1961), in which the Fifth Circuit instructed this Court to exercise its jurisdiction under the federal civil rights statutes and issue a temporary restraining order staying a state prosecution on the ground that a substantial claim was stated by the plaintiff and that a failure to grant interlocutory relief would moot plaintiff's case. In that case the Fifth Circuit accepted the argument that prosecution of a known civil rights worker under a questionable charge would have the unconstitutional effect of deterrring Negroes from the exercise of constitutional rights.

This Court did not permit witnesses offered to provide testimony of such intimidating effects to so testify. Nevertheless, it is submitted that the Court must take judicial notice of the fact that this prosecution of a well-known civil rights worker for perjury will have the intimidating effects described above regardless of its ultimate outcome.

This Court should not allow itself to be misled by protestations of the defendants that the prosecution of plaintiff was not begun for purposes of intimidation and will have no such effect. Federal courts in this Circuit have become quite experienced at seeking out the true purpose of actions by state governments designed to suppress the exercise of Constitutional rights. In Bush v. Orleans Parish School Board, 194 F. Supp. 182 (E. D. La., New Orleans Div., 1961), the defendant state officials protested their innocence of intimidational motives. The Court pierced the flimsy smokescreen of their protestations and found that ". . . the State has now marshalled the full force of its criminal law to enforce its social philosophy through the policeman's club." 194 F. Supp. at 186. The Court quoted Graham v. Folsom, 200 U. S. 248 (1906), for the proposition that

> ". . . courts cannot permit themselves to be deceived. They will not inquire too closely into the motives of the state, but they will not ignore the effect of its action.'"

This Court also refused to allow testimony with respect to plaintiff's experiences during a seventeen day stay in a Jackson jail following her arraignment for perjury and with respect to experiences with which plaintiff is familiar of other civil rights workers in Mississippi jails. Such testimony was offered for the purpose of showing the basis of plaintiff's fears of a trial in the courts of Mississippi in which she is threatened with ten years in a Mississippi penal institution. Such fears on the part of plaintiff based upon her knowledge of how Mississippi policemen and jailers treat civil rights "agitators," are relevant to the contention here made on her behalf that if a temporary injunction is not granted, plaintiff will unquestionably suffer serious and irreparable injury by being put through the terrifying experience of a trial for perjury at which ten years of her life hang in the balance - to be spent, in the event of conviction, in the penal system of Mississippi.

It is submitted that the Court can take judicial notice of the fact that if plaintiff's perjury trial is allowed to proceed before this case is decided on its merits, and if this case is ultimately decided in her favor, no amount of money damages awarded after the fact will be able to undo the terrible harm that will have been done.

This Court can also take judicial notice of the fact that if it issues an interlocutory injunction as prayed for in the Complaint herein, none of the defendants will be caused even the slightest inconvenience or injury thereby.

Thus, there can be no doubt but that when this Court "balances the conveniences of the parties and possible injuries to them accordingly as they may be affected by the granting or withholding of the injunction" as it is bound to do in determining whether or not the temporary relief here sought should be granted (Yakus v. United States, 321 U. S. 414, 440 (1944)), it must find that the balance of threatened injuries, the requirements of justice and fairness upon which equity jurisdiction is based, and the mandate of the federal civil rights statutes, as interpreted by the Fifth Circuit, require that a temporary injunction issue in this case.

The controlling principle of law was succinctly stated by the Court in Airport Parking, Inc. v. New Orleans Aviation Board, 185 F. Supp. 736, 738 (E. D. La., 1960):

> "Where . . . the questions presented by an application for a temporary injunction are grave and the injury to the moving parties will be certain and irreparable if the application be denied and final decree be in their favor, while if the injunction be granted, the injury to opposing parties, even if the final decree be in their favor, will be inconsiderable, the temporary injunction should be granted."

Accord, _Perry v. Perry_, 190 F. 2d 601 (D. C. Cir. 1951); _Bergen Drug Company v. Parke, Davis & Company_, 307 F. 2d 725, 728-9 (3d Cir. 1962); _Durkin v. John Hancock Mutual Life Insurance Co._, 92 F. Supp. 893 (S. D. N.Y. 1950).

There is Probable Cause to Believe That The Prosecution of Plaintiff For Perjury Violates Her Constitutional Right to Equal Protection of the Laws And That An Official Conspiracy Is Involved

An examination of the transcript of testimony given at plaintiff's trial for disorderly conduct on October 15, 1963, which is submitted herewith as "Appendix to Plaintiff's Memorandum in Support of Her Prayer for an Interlocutory Injunction," will show the Court

(1) that plaintiff testified that she was "sort of confused, because I had never seen a demonstration quite like it before, and, specifically, all the brutality" (p. 69),

(2) that plaintiff's testimony was extremely discursive and contained much matter utterly irrelevant to the question of whether she was or was not, at the time of her arrest, behaving in such a way as to be guilty of "disorderly conduct," including the references to certain behavior of the Jackson police upon which her indictment for perjury was based,

(3) that plaintiff testified on cross-examination that things were "terribly chaotic" at the scene of her arrest (p. 82), and

(4) that there was simply a conflict or variance between the plaintiff's recollection of what she saw the police do that day and what two representatives of the police force said they saw their fellow policemen do.

The self-interest of the police witnesses in minimizing the extent to which billy clubs were used that day is perfectly evident.

This Court can take judicial notice of the fact that the conflict between the testimony of plaintiff and that of the police witnesses with respect to the behavior of the Jackson police on Rose Street was no more direct and considerably less relevant than that which occurs at any misdemeanor trial at which the defendant pleads not guilty and gives testimony contrary to that of the arresting officers.

Indeed defendant Jack Travis testified at the hearing on April 20, 1964, that in his capacity as City

Prosecutor he and his assistants have prosecuted over 6,000 misdemeanor cases and that until the plaintiff's case, he had never before known or heard of any case in Mississippi where a defendant whose testimony conflicted with that of prosecution witnesses was bound over to the sheriff and charged with perjury.

Defendant Travis also testified that he was the prosecuting attorney at plaintiff's trial for disorderly conduct and that until Judge Moore set bond at $2,000 and ordered plaintiff to be bound over for a perjury charge before a grand jury, it had not occurred to him that any perjury had been committed in the course of the trial.

It is submitted that these facts are sufficient to show that there is probable cause for this Court to believe that plaintiff is being treated by the persons responsible for her prosecution in an unusual and extraordinary manner in violation of her Constitutional right to equal protection of the laws. It is clear that the processes involved in the prosecution of plaintiff are not the usual, orderly, judicial and criminal processes of the State of Mississippi.

It is obvious that a factor other than the conflict between plaintiff's testimony and that of the police witnesses, namely plaintiff's known identity as a civil rights worker, is the real reason for the prosecution of the plaintiff for perjury.

At the hearing on April 20, 1964, defendant Moore, the judge at plaintiff's trial for disorderly conduct, gave testimony containing strong inferences that his association of plaintiff with newspaper reports of civil rights activity in Plaquemine, Louisiana, had a strong influence on his attitude toward her and upon his opinion of her veracity. Judge Moore also testified that he was aware, during plaintiff's trial before him, that the police had beaten at least one man at the scene of her arrest. He stated that he knew that the police had not behaved as plaintiff testified because he had read local newspaper reports of the incident and they had reported only the one beating. He testified that he thought plaintiff's testimony with respect to police brutality was untrue because he felt she had confused in her mind the behavior of policemen in Plaquemine, Louisiana, with that of Jackson policemen on the day of her arrest. He stated that although he had recused himself from hearing other cases when it came to his attention that he had prior knowledge of activities on the part of the defendants which might influence his judgment, when he learned that plaintiff was someone whose civil rights activities in Plaquemine he had read about in the newspapers, he neither recused himself from the case nor notified counsel of his prior knowledge and possible bias. It was apparent from Judge Moore's testimony and from his demeanor that he has strong negative feelings about active civil rights workers from the North. It was apparent also that he held plaintiff's civil rights activity in Plaquemine as a black mark against her.

As was the case with defendants Travis and Thompson, counsel for plaintiff was not permitted to cross-examine defendant Moore with respect to his views on racial segregation. The official attitude of the City Administration of Jackson with respect to civil rights workers was, however, made clear in the testimony of defendant Allen Thompson, Mayor of Jackson, who testified that as a matter of official policy, he felt that while an assemblage of ordinary Negroes is not of itself unlawful, an assemblage organized by the N. A. A. C. P. and similar "agitators" is per se illegal and should not be allowed. Moreover, the existence of a statewide conspiracy on the part of public officials to suppress civil rights demonstrations and other activities by official force is indicated by the fact that defendant Governor Paul Johnson recently signed into law five bills which (1) prohibit picketing of public buildings, (2) ban the distribution of boycott literature, (3) permit cities to enter into mutual aid pacts to suppress demonstrations, (4) permit cities to restrict movements of groups and establish selective curfews, and (5) permit cities to increase penalties for violation of ordinances to a maximum of 90 days in jail and $300.

Defendant Travis testified that Judge Moore had instructed him, after the jury at her trial had returned a verdict of guilty, to obtain a copy of the trial transcript and turn it over to defendant District Attorney Waller so that a presentation could be made to a grand jury for a perjury indictment. Defendant Moore admitted, during his testimony, that he followed up on his instructions to Travis by later contacting Assistant District Attorney Fox and asking whether or not his office had received the transcript. It was Fox who presented the case to the grand jury and obtained the indictment.

Thus, it is apparent (1) that Judge Moore was the motivating force behind the presentation of perjury charges against plaintiff to the grand jury, (2) that Judge Moore's decision to have plaintiff charged with perjury was influenced to a considerable degree by his identification of her with newspaper reports of civil rights activity in Louisiana and Mississippi, (3) that defendant Travis followed Judge Moore's instructions in obtaining a trial transcript and presenting it to the District Attorney's office even though he knew that such a procedure was so rare as to be practically unheard of and notwithstanding the fact that plaintiff's testimony had not struck him as perjurous, and (4) that defendant District Attorney Waller and his assistant Fox also cooperated with Judge Moore's personal vendetta against plaintiff by presenting the case to a grand jury and obtaining an indictment even though they, too, must have known, as defendant Travis did, that there had not been a perjury indictment arising out of a conflict between the testimony of the defendant and that of prosecuting witnesses (or newspaper stories) at a misdemeanor trial in Jackson in the past seven years. As prosecuting attorneys responsible for the implimentation of the criminal laws of Mississippi, Waller and Fox must have known also (1) that section 2315 of the Mississippi Code of 1942 provides that in order for testimony to constitute perjury, it must (a) be wilfully false and (b) relate to a "material matter," (2) that the occurrence of police brutality at the scene of plaintiff's arrest was obviously not a "material matter" so far as her guilt or innocence of disorderly conduct was concerned, and, therefore, (3) that the prosecution undertaken was totally void of legal merit.

Thus, if this prosecution is indeed, as there is probable cause to believe, an unusual one undertaken for a tainted purpose and, therefore, in violation of plaintiff's Constitutional rights, there has clearly been established the nucleus of an official conspiracy to conduct it. The questions which remain for determination at the trial of this case on the merits are (a) whether or not this prosecution violates plaintiff's constitutional rights and the federal statutes referred to in the Complaint, and (b) if such a violation of plaintiff's rights has taken place, how many officials other than Moore, Travis, Fox, Waller, and the judge before whom plaintiff is tried for perjury (if such a trial is permitted to take place) were involved in the over-all official conspiracy to suppress civil rights activity in Mississippi of which this particular prosecution is but a small part.

A Federal District-Court Has Power To Grant A Temporary Injunction To Stay A State Criminal Prosecution Where A Threat Of Immediate And Irreparable Injury Exists and Where A Substantial Question Has Been Raised As to The Constitutionality of The Prosecution Under the Federal Civil Rights Statutes

1. Plaintiff has properly invoked the jurisdiction of this Court.

In the Complaint herein, plaintiff has properly invoked the jurisdiction of this Court under the Federal Civil Rights Act and under the Constitution of the United States. See, for example: Douglas v. City of Jeannette, 319 U. S. 157 (1963); Bell v. Hood, 327 U. S. 678 (1946); Bock v. Perkins, 139 U. S. 628 (1891); Hague v. Committee for Industrial Organization, 307 U. S. 496 (1939); Bailey v. Patterson, 323 F. 2d 201 (5th Cir. 1963); Jordan v. Hutcheson, 323 F. 2d 597 (4th Cir. 1963); Aelony v. Pace, Harris v. Pace, (3 Judge Ct., M. D. Ga., Nov. 1, 1963); Daniel v. Davis, 220 F. Supp. 601 (E. D. La., Baton Rouge Div., 1963).

2. This Court has power to grant a permanent injunction if it is ultimately decided that the state prosecution here under attack violates plaintiff's constitutional rights.

It is now settled beyond question in the Fifth Circuit that a federal district court has power to enjoin a state prosecution which constitutes an unconstitutional application of state law where such prosecution threatens immediate and irreparable injury to fundamental Constitutional rights. *Aelony v. Pace, Harris v. Pace*, *supra*; *United States v. Wood*, 295 F. 2d. 772, 778-785 (5th Cir. 1961); *Bailey v. Patterson*, 323 F. 2d 201 (5th Cir. 1963); *City of Houston v. Dobbs Co.*, 232 F. 2d 428 (5th Cir. 1956); *Denton v. Cityof Carrollton*, 235 F. 2d 481 (5th Cir. 1956); *Bush v. Orleans Parish*, 194 F. Supp. 182 (E. D. La., 1961); *Browder v. Gayle*, 142 F. Supp. 707 (M. D. Ala. No. Div., 1956), *aff'd*, 352 U. S. 903 (1956), *rehearing denied*, 352 U. S. 950 (1956), 352 U. S. 955 (1956); *Louisiana ex rel Gremillion v. NAACP*, 181 F. Supp. 37 (E. D. La., New Orleans Div. 1960), *aff'd*, 366 U. S. 293 (1961); *Morrison v. Davis*, 252 F. 2d 102 (5th Cir. 1952). See also, *Jordan v. Hutcheson*, 323 F. 2d 597 (4th Cir. 1963); *Moore, Commentary on Judicial Code*, pp. 408-9; *A F of L v. Watson*, 327 U. S. 582 (1946); *Truax v. Reich*, 239 U. S. 33 (1915); *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Terrace v. Thompson*, 263 U. S. 197

(1923); *Hague v. CIO*, 307 U. S. 496 (1939); *Hynes v. Grimes Packing Co.*, 337 U. S. 86 (1949); *Cline v. Frink Dairy Co.*, 274 U. S. 445 (1927); *Hale v. Bimco Trading Co.*, 306 U. S. 375 (1939).

In *Morrison v. Davis*, 252 F. 2d 102 (5th Cir. 1958), a three-judge panel of the Fifth Circuit consisting of Chief Judge Justice Hutcheson and Judges Tuttle and Jones cited *Browder v. Gayle*, 142 F. Supp. 707 (M. D. Ala., No. Div., 1956), *aff'd*, 352 U. S. 903 (1956), as controlling and held, in a Per Curiam opinion (252 F. 2d at 103) :

> "That case disposes of the contention that the federal court should not grant an injunction against *the application or enforcement of a state statute, the violation of* which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reasons of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C.A. § 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced. To the extent that this is inconsistent with Douglas v. City of Jeannette, Pa., 319 U. S. 157, 63 S.Ct. 877, 87 L.Ed. 1324, we must consider the earlier case modified." (emphasis supplied.)

3. *28 U. S. C. § 2283 does not bar injunctive relief under the federal civil rights statutes in an appropriate case.*

28 U. S. C. § 2283 does not apply where an injunction against state court proceedings is expressly authorized by an Act of Congress. Section 2283 states specifically that "A court of the United States may not grant an injunction to stay proceedings in a State court *except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction* . . . ." (Emphasis supplied.)

42 U. S. C. § 1983 provides that:

> "Every person who, under color of any statute, ordinance, . . . (etc.) of any State . . . subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in . . . (a) *suit in equity, or other proceeding for redress.*" (Emphasis supplied.)

Thus 42 U. S. C. § 1983 specifically authorizes equitable relief of the kind sought in this action. *Aelony v. Pace, Harris v. Pace, supra; Morrison v. Davis, supra; Browder v. Gayle, supra; United States v. Wood, supra.*

4. Where a Substantial claim for equitable relief staying a state prosecution is stated under the federal civil rights statutes, the district court must grant an interlocutory order in order to prevent irreparable injury to constitutional rights and the mooting of plaintiff's claim.

Such is the rule established for the Fifth Circuit in United States v. Wood, 295 F. 2d 772 (5th Cir. 1961). Indeed, there is a stronger argument for the granting of interlocutory relief in this case than there was in United States v. Wood, for two reasons:

(1) there the prosecution under attack was merely a misdemeanor proceeding before a Justice of the Peace, whereas here plaintiff seeks to enjoin a felony prosecution, and

(2) in the Wood case, plaintiff did not contend that the state prosecution threatened to violate the Constitutional rights of the defendant therein whereas here, plaintiff alleges a violation of her Constitutional rights, a violation of the Constitutional rights of other civil rights workers, and a violation of the civil rights of Negroes in Mississippi generally.

In the Wood case, the Fifth Circuit held that the arrest and prosecution of a known voter registration worker for a misdemeanor threatened irreparable injury to the Constitutional rights of unregistered Negroes in the area of the prosecution to vote in federal elections and that this Court was under a legal duty to grant an interlocutory order staying the prosecution. The teaching of United States v. Wood is controlling in the present case. See also, Jordan v. Hutcheson, 323 F. 2d 597, 600-606 (4th Cir. 1963).

Conclusion

In light of the above, it is respectfully submitted that this Court must grant a temporary or interlocutory injunction as prayed for in the Complaint herein.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE,	PLAINTIFF
VS.	CIVIL ACTION NO. 3535(J)(M)
PAUL B. JOHNSON, JR. individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT,	DEFENDANTS

This is an action brought by Lois Chaffee, a citizen of the State of Idaho, against Paul B. Johnson, Jr., Governor of the State of Mississippi, Joe T. Patterson, Attorney General, Leon F. Hendrick, Circuit Judge, Russell D. Moore, III, County Court Judge, William L. Waller, District Attorney, Allen Thompson, Mayor of the City of Jackson, Jack Travis, City Prosecutor, W. D. Rayfield, Chief of Police of the City of Jackson, J. L. Ray, Deputy Chief of Police, and Ross R. Barnett,

former Governor of the State of Mississippi. Plaintiff seeks to enjoin the defendants from prosecuting plaintiff under an indictment for perjury returned by a grand jury of Hinds County, Mississippi. Her complaint also demands damages from said defendants for alleged violations of her civil rights.

The complaint alleges that plaintiff is presently awaiting trial under an indictment returned by a grand jury charging her with perjury while testifying in a criminal action in the County Court of Hinds County, Mississippi, on October 15, 1963. It is alleged that the defendants entered into a conspiracy to have the plaintiff indicted and prosecuted for perjury for the purpose of intimidating and discouraging plaintiff and others from engaging in civil rights activities. The various defendants filed answers denying the material allegations of the complaint.

The evidence offered by all parties on hearing of plaintiff's motion for a temporary restraining order wholly failed to substantiate the charges made by plaintiff against the defendants. Although plaintiff was present during the hearing, she did not testify in support of the allegations of her complaint. The defendants took the stand and denied the above mentioned allegations of the complaint unequivocally. The plaintiff has, therefore, wholly failed to make a showing which would entitle her to the temporary restraining order which she seeks.

It is not for this Court to determine either the innocence or guilt of the plaintiff of the offenses for which she stands charged in the Courts of the State of Mississippi. All rights of the plaintiff, including her constitutional rights, will be protected by the State Courts. As an effort to enjoin the prosecution of the plaintiff for perjury in the State Court, the injunction sought herein is prohibited by 28 U.S. Code, Section 2283. H. J. Heinz Co. v. Owens, U.S.C.A.9th, 189 F.2d 505; T. Smith & Son, Inc. v. Williams, U.S.C.A.5th, 275 F.2d 397; Wilson v. Schnettler, 365 U.S. 381, 5 L.Ed.2d 620, 81 S.Ct. 632. Said Section 2283 is not suspended or modified by the Civil Rights Act. Smith v. Village of Lansing, U.S.C.A.7th, 241 F.2d 856; Goss v. State of Illinois, U.S.C.A.7th, 312 F.2d 257. The statutory prohibition is not avoided by enjoining state officials rather than the State Court itself. Sperry Rand Corporation v. Rothlein, U.S.C.A.2nd, 288 F.2d 245; Furnish v. Board of Medical Examiners of Calif., U.S.C.A.9th, 257 F.2d 520; Amalgamated Clothing Workers v. Richman Bros., 1955, 348 U.S. 511, 75 S.Ct. 452, 457, 99 L.Ed. 600; Toucey v. New York Life Ins. Co., 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100. Counsel for plaintiff rely primarily on United States v. Wood, U.S.C.A.5th, 295 F.2d 772, which holds that Section 2283 is inapplicable to a suit brought by the United States. This clearly distinguishes it from the case at hand.

If this Court had the authority to issue the injunction prayed for, it would not, as a federal Court of equity, issue such injunction in view of the facts disclosed at the hearing. Cleary v. Bolger, 371 U.S. 392, 9 L.Ed.2d 390, 83 S.Ct. 385; Wojcik v. Palmer, U.S.C.A.7th, 318 F.2d 171; Douglas v. Jeannette, 319 U.S. 157, 87 L.Ed. 1324; Watchtower Bible & Tract Soc. v. City of Bristol, 24 F.Supp.

57, affirmed 305 U.S. 572, 83 L.Ed. 361. An injunction staying State criminal proceedings is an extraordinary remedy which will not be indulged in by a Federal Court of equity except in a case clearly demanding it. Bailey v. Patterson, 366 U.S. 346, 7 L.Ed.2d 332, 82 S.Ct. 282; Warner Bros. Pictures v. Gittone, U.S.C.A.3rd, 110 F.2d 292; Murray Hill Restaurant v. Thirteen Twenty One Locust, U.S.C.A.3rd, 98 F.2d 578; American Mercury v. Kiely, U.S.C.A.2d, 19 F.2d 295; 1 Joyce on Injunctions, Sec. 109A; 1 High on Injunctions, Sec. 10; South Carolina Power Co. v. South Carolina Commission, 286 U.S. 525, 52 S.Ct. 494, 76 L.Ed. 1268; United States v. Corrick, 293 U.S. 435, 56 S.Ct. 829, 80 L.Ed. 1263; Meccano v. Wanamaker, 253 U.S. 136, 40 S.Ct. 463, 64 L.Ed. 822; Westinghouse Electric Corp. v. Free Sewing Mach. Co., U.S.C.A.7th, 256 F.2d 806; Meiselman v. Paramount Film Distributing Corp., U.S.C.A.4th, 180 F.2d 94.

The complaint alleges, and counsel for plaintiff contend that plaintiff will not receive a fair trial in the Courts of the State of Mississippi. There is no factual basis for any such contention, and there is a strong legal presumption to the contrary. Harrison v. N.A.A.C.P., 360 U.S. 167, 3 L.Ed.2d 1152; Hawk v. Jones, U.S.C.A.8th, 160 F.2d 807; N.A.A.C.P. v. Bennett, D.C. Ark., 178 F.Supp. 191; Browder v. City of Montgomery, D.C. Ala., 146 F.Supp. 127.

Realizing that their proof did not support the allegations of the complaint against the defendants, counsel for plaintiff, at the hearing, took the position that an injunction should issue to protect the class which plaintiff purported to represent. The complaint described the alleged

class as all persons who are workers for the end of discrimination and segregation in Mississippi, for the encouragement of the exercise by Negroes in Mississippi of their right to vote and to register to vote, and for the exercise and preservation of civil rights generally in Mississippi. Clearly this is not a proper class action. The vague and indefinite description of the purported class depends upon the state of mind of a particular individual, rendering it difficult, if not impossible, to determine whether any given individual is within or without the alleged class. The members of a class must be capable of definite identification as being either in or out of it. Giordano, et al v. Radio Corp. of America, et al, U.S.C.A.3rd, 183 F.2d 558; Mitchell v. Wright, et al, D.C.Ala., 62 F.Supp. 580; Reddix v. Luckey, U.S.C.A.5th, 252 F.2d 930. Plaintiff cannot make this a class action by merely calling it such. Whether this is a proper class action involves a question of fact with the burden of proof on the plaintiff. This burden has not been met in this case. Clark v. Thompson, D.C. Miss., 206 F.Supp. 539, affirmed 313 F.2d 637, cert. den. 11 L.Ed.2d 312.

The Writ of Injunction and Writ of Habeas Corpus are extraordinary writs and neither should be granted unless the facts require it. It is a general rule that a Writ of Habeas Corpus will not be granted, nor a Writ of Injunction enjoining the prosecution by the State in the State Courts of a criminal action pending therein. A recent case from this circuit is that of Lucien Richards and James Brown v.Rayfield, Chief of Police, 320 F.2d 96, cert denied 11 L.Ed.2d 143. In this case emphasis is placed upon the case of In Re Wyckoff, and

the doctrine of the Wyckoff case was reaffirmed by Judge Tuttle in the Richards and Brown case. The opinion of the Court of Appeals in the Wyckoff case is not reported by West Publishing Company, but is reported in 6 Race Relations Law Reporter 793, and a lengthy opinion reviewing many of the authorities was written by the District Judge which is reported in 196 F.Supp. 515. The Court of Appeals affirmed the District Court in the Wyckoff case, and application was then made to Mr. Justice Black and Mr. Justice Clark of the Supreme Court, and they, acting for the Supreme Court, denied the writ on the theory that the applicant had not exhausted state remedies. Judge Tuttle wrote a strong opinion indicating that before an applicant would be entitled to a writ he must show that he has exhausted all available state remedies even to the extent of applying to the State Court for a Writ of Habeas Corpus before coming into Federal Court. This rule of law is equally applicable to a petition seeking to enjoin a State authority from prosecuting a criminal case.

Plaintiff's motion for a temporary restraining order is denied.

SO ORDERED, this 18th day of May, 1964.

S. C. Mize

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 21638

- -x

LOIS CHAFFEE,

Appellant,

-against-

PAUL B. JOHNSON, JR., individually,
and as Governor of the State of
Mississippi, ET AL.,

Appellees.

- -x

Motion for Release of Transcript
And Other Relief

The appellant moves this Court to enter an order

(1) releasing the original transcript of the hearing held in the District Court on April 20, 1964, from the custody of the Clerk of this Court and directing that it be transmitted to Paul O'Dwyer, Esq., 50 Broad Street, New York 4, New York, for use in the preparation of a brief on appeal,

(2) extending appellant's time for filing her brief until thirty (30) days after her counsel has received said original transcript, and

(3) directing that if this Court shall decide upon the instant appeal that appellant should be granted an interlocutory injunction pending trial on the merits herein, a

copy of said original transcript shall be issued to her without cost for use by her counsel in preparation for trial.

Counsel for appellant believes that the relief requested herein is reasonable and necessary for the adequate representation of appellant in this proceeding. To deny one adjudicated a poor person under 28 U. S. C. § 1915 use of a transcript without cost where such is necessary for effective advocacy would constitute an invidious discrimination against appellant in violation of her right to equal protection of the laws under the Fifth Amendment to the Constitution of the United States. Hardy v. United States, 375 U.S. 277 (1964); Draper v. Washington, 372 U.S. 487 (1963); Smith v. Bennett, 365 U.S. 708 (1961); Fulwood v. Clemmer, 295 F.2d 171, 174 (D.C. Cir. 1961); Gideon v. Wainwright, 372 U.S. 335 (1963); Coppedge v. United States, 369 U.S. 438 (1962).

Counsel hereby waives oral argument on this motion and elects not to submit a brief in connection therewith.

O'DWYER & BERNSTIEN
Attorneys for Appellant
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50 Broad Street
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Paul O'Dwyer, Esq.
Of Counsel

CARL RACHLIN
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R. JESS BROWN
Attorney for Appellant
Office & P.O. Address
125-1/2 North Farish Street
Jackson, Mississippi

Attorneys for Appellant

By ______________________

CERTIFICATE

The undersigned of counsel certifies that true and correct copies of the foregoing motion were this day mailed by United States mail, postage pre-paid, to the following of counsel for defendants-appellees:

HON. WILL S. WELLS
Assistant Attorney General
of Mississippi
P.O. Box 220
Jackson, Mississippi

E. W. STENNETT, ESQ.
P. O. Box 17
Jackson, Mississippi

THOMAS H. WATKINS, ESQ.
800 Plaza Building
P. O. Box 650
Jackson, Mississippi

October 1, 1964

By ______________________
Of Counsel

Lois Chafee

SEP 25 1964

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE,

Plaintiff, :

-against-

PAUL R. JOHNSON, JR., individually and as Governor of the State of Mississippi, JOE TO. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT,

Defendants.

Civil Action
No. 3535 (J)(M)

Notice of Motion

TO:

HON. WILL S. WELLS
Assistant Attorney General of Mississippi
P. O. Box 220
Jackson, Mississippi

HON. E. W. STENNETT
Attorney At Law
P. O. Box 17
Jackson, Mississippi

HON. THOMAS H. WATKINS
Attorney At Law
800 Plaza Building
P. O. Box 650
Jackson, Mississippi

Attorneys of record for defendants herein.

PLEASE TAKE NOTICE that the undersigned will bring the attached motion for hearing before this Court in the courtroom on the Fourth Floor of the Federal Building, Jackson, Mississippi, at 9:30 A.M., on the day of September, 1964, or as soon thereafter as counsel for plaintiff can be heard.

O'DWYER & BERNSTIEN
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R. Jess Brown, Esq.
of Counsel

R. JESS BROWN
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125-1/2 North Farish Street
Jackson, Mississippi

Attorneys for Plaintiff

By___________________________

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE,

Plaintiff, :

-against-

Civil Action
No. 3535 (J)(M)

PAUL R. JOHNSON, JR., individually and as Governor of the State of Mississippi, ET AL., :

Defendants. :

Motion

The plaintiff moves the Court to enter an order pursuant to 28 U.S.C § 753(f) certifying that the appeal herein from the decision and order of this Court signed on May 18, 1964, denying plaintiff's motion for a temporary or interlocutory injunction "is not frivolous but presents a substantial question" and directing that plaintiff be furnished with one copy of the transcript of the hearing herein that was held on April 20, 1964, without cost to her.

Plaintiff moves for such order on the ground that the order of the United States Court of Appeals for the Fifth Circuit herein filed on September 18, 1964, was necessarily based upon a finding by that Court, pursuant to 28 U.S.C § 1915, that the instant appeal is made in good faith and presents a substantial question for consideration by said Court of Appeals. This Court is bound by that finding of the Fifth Circuit; and because it is so bound, this Court has no alternative but to "certify" such finding of the existence of a substantial question on appeal for purposes of 28 U.S.C. § 753(f). If this Court refuses to grant such certification and thereby to authorize plaintiff to receive a transcript without cost to her, such refusal will, in the view of counsel for plaintiff, constitute a misinterpretation of 28 U.S.C. § 753(f) and an invidious discrimination against plaintiff, an adjudicated pauper for purposes of 28 U.S.C. § 1915, in violation of her right to equal protection of the laws under the Fifth Amendment to the Constitution of the United States. Hardy v. United States, 375 U.S. 277 (1964); Draper v. Washington, 372 U.S. 487 (1963); Smith v. Bennett, 365 U.S. 708 (1961); Fulwood v. Clemmer, 295 F.2d 171, 174 (D.C. Cir. 1961); Gideon v. Wainwright, 372 U.S. 335 (1963); Coppedge v. United States, 369 U.S. 438 (1962).

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125-1/2 North Farish Street
Jackson, Mississippi

Attorneys for Plaintiff

By ______________________________

CERTIFICATE

The undersigned of counsel certifies that true and correct copies of the foregoing Notice of Motion and Motion were this day mailed by United States mail, postage pre-paid, to the counsel for defendants whose names and addressed appear on said Notice of Motion.

September , 1964

Of Counsel.

JUL 10 1964

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21638

- -x

LOIS CHAFFE,

Appellant,

vs.

PAUL B. JOHNSON, JR., individually
and as Governor of the State of
Mississippi, ET AL.,

Appellees,

- -x

BRIEF FOR APPELLANT

PRELIMINARY STATEMENT

This brief is submitted pursuant to the order of this Court herein filed June 23, 1964. It is submitted (1) in support of plaintiff-appellant's appeal from the order below herein denying her leave to proceed herein *in forma pauperis* and (2) in support of her application for a stay pending appeal from that order and from the order below denying her motion for an interlocutory injunction.

I

THE ORDER BELOW OVERRULING APPELLANT'S MOTION FOR PERMISSION TO PROCEED IN FORMA PAUPERIS SHOULD BE REVERSED OR AN ORDER BY THIS COURT GRANTING SUCH PERMISSION SHOULD BE ENTERED.

1. The order of Judge Mize below was based upon a number of misconceptions or errors of law.

Reading the order of Judge Mize issued on May 27, 1964, and his letter of the same date together, it appears with reasonable clarity that said order was based upon two major premises, both of which are contrary to law, i.e.,

(1) that because, in Judge Mize's opinion, "the appeal is without merit," permission to proceed in forma pauperis can properly be denied and

(2) that because "her employment (by CORE) furnishes her room and board and pays her a salary (less than $10 per week)" and because Judge Mize believed (without any evidence having been presented to that effect) that "her suit is being financed by CORE or some other organization and not by her," "she could advance the court costs." (Emphasis supplied.)

It has been clearly established federal law since 1958 that "The only statutory requirement for the allowance of an indigent's appeal is the applicant's 'good faith.' 28 U.S.C. Sec. 1915" and that "The good-faith test must not be converted into a requirement of a preliminary showing of any particular degree of merit." Ellis v. United States, 356 U.S. 674, 675 (1958). In that case the Supreme Court stated unequivocally that "Unless the issues raised are so frivolous that the appeal would be dismissed in the case of a nonindigent litigant . . ., the request of an indigent for leave to appeal in forma pauperis must be allowed." (356 U.S. at 675)

3A Barron & Holtzoff, Federal Practice and Procedure Sec. 1589 (1963 Pocket Part at 28-29) accurately states the holding of the Ellis case to be "that no showing of merit in the appeal need be made in order to obtain leave to appeal in forma pauperis. The court held that in the absence of some evident improper motive, good faith is established by the presentation of any issue that is not plainly frivolous." Neither Judge Mize's order nor his letter contains any indication that the appeal from his order denying an interlocutory injunction raises only utterly frivolous questions. Nor is there any indication in the order below, in the letter of Judge Mize, or in any of the papers filed by opposing counsel that appellant's financial status is other than what she stated to the court below.

In Coppedge v. United States, 369 U. S. 438 (1962), the Supreme Court, in an opinion by Chief Justice Warren, held that the test of "good faith" under 28 U.S.C. Sec. 1915 is an "objective" standard and that an appeal must be truly "frivolous" in the sense of being completely lacking in color of substance before permission to proceed in forma pauperis can properly be denied. Chief Justice Warren stated (369 U.S. at 446) that: ". . . if from the face of the papers he has filed, it is apparent that the applicant will present issues for review not clearly frivolous, the Court of Appeals should then grant leave to appeal in forma pauperis . . . ." and later in his opinion (369 U. S. at 448) he wrote:

> "It is the burden of the Government, in opposing an attempted criminal appeal in forma pauperis, to show that the case is lacking in merit, indeed, that it is so lacking in merit that the court would dismiss the case on motion..., had the case been docketed and a record been filed by an appellant able to afford the expense of complying with those requirements."

Although both Ellis and Coppedge were federal criminal cases, 3A Barron & Holtzoff, supra (1963 Pocket Part at 29), points out quite properly that in those cases the Court "was construing 28 U.S.C.A. Sec. 1915 which applies equally in criminal and civil proceedings, and presumably the same standard will apply in both kinds of cases."

Thus it is perfectly clear from the authorities that Judge Mize operated under a misconception or false assumption of law when he assumed that a motion for permission to proceed in forma pauperis could properly be denied on the ground that the appeal was "without merit." Therefore his decision was based upon an error of law. That fact alone is sufficient ground for reversal. But the decisions discussed above indicate that at this stage of the proceedings, the proper procedure is for this Court to examine the papers filed by appellant and the designated record and to determine for itself whether or not the issues raised on appeal are utterly frivolous in nature. If they are not, then an order permitting appellant to proceed in forma pauperis should issue from this Court.

The second erroneous assumption of the court below was that the financial status of appellant's employer can properly be attributed to her for the purpose of denying her motion for permission to proceed in forma pauperis.

There is no indication in 28 U.S.C. Sec. 1915, in 28 U.S.C. Sec. 753, in Federal Rule 75, or in the cases under any of those provisions that the financial status of an employer can be attributed to his employee for the purpose of creating a fictitious financial standing that operates to close the doors of the federal courts to one not himself financially able to pay the costs and security in his federal proceeding.

The language of Judge Mize's letter indicates that he conceives some duty to exist in the appellant to petition her employer or some other presumably charitable source for a loan or "advance" of the money with which to pay the costs and security of her federal action. There is no federal law that requires one who cannot pay the costs and security in his action to beg for funds as a prerequisite to the granting of permission to proceed in forma pauperis. Such an implication demeans the dignity of the federal government and of the federal judiciary, for it suggests that they would force poor persons to sacrifice what dignity they have maintained in their unfortunate circumstances in order to protect their legal rights.

And even if appellant's employer or some other source might be willing to "advance" appellant the funds necessary to pay costs and security in this action, repayment of the sums necessarily "advanced" would take appellant the rest of her life and then some at her present rate of pay.

Regardless of what source may have provided the funds with which this action was commenced, there is no requirement in law that that source must continue to provide appellant with funds until final determination is reached herein. It is appellant's action, and only her financial status is relevant to the question of whether or not she is entitled to the rights of one who cannot pay security and costs. She need not appeal to anyone for aid if she does not desire to do so. And if she were to make such an appeal, there is no one with a legal duty to comply with it.

2. The order below denying appellant permission to proceed in forma pauperis constitutes an abuse of judicial discretion.

In his order and supporting letter below, Judge Mize reaches the following conclusions:

> (1) "the plaintiff could pay court costs or give bond" and
>
> (2) "it is evident that her suit is being financed by CORE or some other organization and not by her."

There was no evidence before the court to support either of those conclusions. The only evidence with respect to appellant's ability to pay costs and security was her own testimony that she earns less than ten dollars per week plus room and board. No evidence of any kind was presented below to show that anyone else was "financing" appellant's action. Counsel for the defendants has attempted on appeal to make up the lack of such evidence by attaching to its brief copies of checks and affidavits purporting to show that some huge source of wealth is behind appellant's case.

In the first place, no amount of exhibits attached to a brief can add one iota toward making up a deficiency in the record below. All counsel for the defendants has done by its belated use of exhibits and affidavits is to underscore the absence of such "evidence" on the record before Judge Mize. The fact is that Judge Mize entered his order without the benefit of any such material.

In the second place, no great source of wealth is behind appellant's action. Her counsel is appearing without promise of payment. Such funds as were obtained for the payment of initial costs have long since been exhausted and filing fees paid out of counsel's pocket in the hope that reimbursement can be obtained at some future time. Any questions the court may have in this connection will be fully answered at oral argument.

II

THIS COURT SHOULD STAY THE PROSECUTION OF APPELLANT BY THE DEFENDANTS UNTIL IT HAS HEARD AND DETERMINED BOTH (1) HER APPEAL FROM THE ORDER DENYING PERMISSION TO PROCEED IN FORMA PAUPERIS AND (2) HER APPEAL FROM THE ORDER DENYING AN INTERLOCUTORY INJUNCTION.

The defendants herein have agreed, through counsel, to refrain from prosecuting appellant only for a period of two weeks following determination by Judge Mize of appellant's motion for an interlocutory injunction. Judge Mize denied that motion on May 18, 1964. Nowhere in any of the papers submitted by their counsel have the defendants provided any indication that they intend to put off prosecution of appellant until this federal proceeding is ultimately decided. Indeed, it is perfectly clear from the tone and arguments presented by their counsel that the defendants are fairly champing at the bit to get appellant's trial under way just as soon as they possibly can. Their eagerness to get on with her trial bears out the allegation in the complaint herein that the purpose of this prosecution is to use the local courts as a coercive device for the further intimidation of other civil rights workers who, like the appellant, have not been driven out of Mississippi by the apparent murder of three of their colleagues under circumstances which point to the possible implication of law enforcement officials.

In this action appellant seeks, first, an injunction permanently forbidding the defendants to prosecute her for perjury on the ground that the conduct of such a trial will constitute a violation of her rights under the federal Constitution and the federal civil rights statutes as well as a violation of the rights of other voter registration workers and of the rights of unenfranchised Negroes generally in Mississippi. Second, she seeks damages from the defendants for the violations of her constitutional rights which have already resulted from the prosecution undertaken by defendants, including seventeen days spent in a Jackson, Mississippi, jail. If the prosecution of the appellant herein is not stayed pending the two appeals now before this Court, she will unquestionably be tried for perjury in the County Court of Hinds County, Mississippi, and her claim to a permanent injunction against such a trial will become moot. Certainly no parade of expert witnesses is necessary for this Court to take notice of the fact that if appellant's trial is allowed to proceed before this federal action is decided on its merits and if this case is ultimately decided in her favor, no amount of money damages awarded after the fact will be able to undo the terrible harm that has been done.

It is clear beyond peradventure of doubt that it will cause serious and irreparable injury to her if the defendants are permitted to put appellant through the agony and emotional torture of a trial at which ten years of her life hang in the balance-to be spent, in the event of conviction, in the penal system of Mississippi, of which other civil rights workers, including the "freedom riders," have such vivid, hair-raising, and disgusting tales to tell. Appellant has herself already spent seventeen days in a Mississippi jail. It is little wonder, then, that the thought of ten years of the same treatment is a source of inestimable terror to her. And those fears are not assauged by knowledge of the fact that her trial, if conducted, will take place in the same courtroom where the best efforts of a diligent prosecutor with an overwhelmingly strong case could not, in two trials, obtain a conviction of Byron Beckwith for the murder of civil rights worker Medgar Evers. The events of recent weeks have demonstrated clearly that a civil rights worker can expect nothing but the worst in Mississippi, even from officers supposedly sworn to uphold the law.

In support of their contention that "appellant is not entitled to the extraordinary remedy of an injunction pending appeal," defendants make the following arguments in their brief headed, "Appellees' Opposition to Appellant's Motions for a Stay Pending Appeal or for a Writ of Mandamus":

> (1) "The plaintiff, although present throughout the hearing, did not take the stand or offer any evidence in support of the serious allegations made by her complaint against the State's highest officials." (p.12)
>
> (2) "It is significant that there is no allegation that said State Court criminal proceeding has been set for trial." (p. 14)
>
> (3) "An injunction pending appeal is an extraordinary remedy which is not granted except where the need therefor is in the nature of an extreme emergency and where the right thereto is clear, convincing and free from doubt." (p. 14)

(4) United States v. Wood, 295 F.2d 772 (5th Cir. 1961), "simply holds that Section 2283, Title 28, U. S. Code does not apply to an action brought by the United States."

In response to argument (1) above, the following should be noted. A sworn statement by appellant in support of her complaint is attached thereto. Nothing would have been added to that sworn statement if she had testified to the same effect before Judge Mize. The witnesses appellant attempted to present at the hearing on April 20, 1964, were, with the exception of one, not permitted to testify.

At that hearing, defendant Jack Travis testified that he was the prosecuting attorney at appellant's trial for disorderly conduct, that until defendant Moore set her bond at $2,000 and ordered her bound over for a perjury charge before the grand jury it had not occurred to him that any perjury had been committed in the course of the trial, and that he nevertheless cooperated with defendant Moore in charging appellant with "Palable Perjury" under Section 2479 of the Mississippi Code of 1942 and with "perjury" under Section 2315 of that Code although he had never seen or heard of such a thing being done in more than 6,000 misdemeanor cases that have been prosecuted during his time as City Prosecutor and although he saw no reason for doing it in this case.

At the hearing, defendant Moore, the judge at appellant's trial, gave testimony containing strong inferences that his association of plaintiff with newspaper reports of civil rights activity in Plaquemine, Louisiana, had a strong influence on his attitude toward her and upon his opinion of her verocity. Judge Moore also testified that he was aware, during plaintiff's trial before him, that the police had beaten at least one man at the scene of her arrest. He testified that he thought plaintiff's testimony with respect to police brutality untrue because he felt she had confused in her mind the behavior of policemen in Plaquemine with that of Jackson policemen on the day of her arrest. He stated that although he had recused himself in other cases when it came to his attention that he had prior knowledge of activities on the part of the defendants which might influence his judgment, when he learned that appellant was someone whose civil rights activities in Plaquemine he had read about in the newspapers, he did not recuse himself from the case, nor did he notify appellant's counsel of his prior knowledge and possible bias. It was apparent from Judge Moore's testimony and from his demeanor that he has strong and possibly overpowering negative feelings about civil rights workers from the North. It was apparent also that he held appellant's civil rights activity in Plaquemine as a black mark against her. As was the case with defendants Travis and Thompson, counsel for appellant was not permitted to cross-examine defendant Moore with respect to his views on racial segregation. The testimony of defendants Moore and Travis made it crystal clear that Moore was the motivating force behind appellant's indictment and that defendants Travis and Waller and Waller's assistant, Fox, knowingly cooperated with him although they all knew that such a prosecution had never before to their knowledge been undertaken.

Those facts alone, admitted by the defendants, amply demonstrate that there is probable cause for this Court to believe that appellant is being treated by the persons responsible for her prosecution in an unusual and extraordinary manner in violation of her right under the federal Constitution to equal protection of the laws. It is clear that the processes involved in this prosecution are not the usual, orderly, judicial and criminal processes of the State of Mississippi. It is obvious that a factor other that the conflict between appellant's testimony and that of the police witnesses at her trial, namely her known identity as a civil rights voter registration worker, is the real reason for the prosecution for perjury which has been undertaken against her.

With respect to argument (2) above emphasizing in support of the good intentions of the defendants that no date has yet been set for appellant's trial, we must point out once again that there is no promise anywhere in the papers submitted by defendants that if this Court refuses a stay pending appeal, a date for appellant's trial will not be set immediately for the purpose of mooting a substantial aspect of this case. Indeed, the implication is clear that that is precisely what will happen unless the defendants are prevented by this Court from doing so.

With respect to argument (3) above, we would like to express our agreement with counsel for the defendants that "an injunction pending appeal is an extraordinary remedy not granted except where the need therefor is in the nature of an extreme emergency and where the right thereto is clear." And we respectfully submit that this case is a clear-cut example of an emergency situation in which a stay pending appeal is absolutely necessary if appellant's claim to permanent injunctive relief is not to be rendered utterly moot by the performance of those very acts by the defendants which the complaint alleges will deprive her of vital constitutional rights.

In response to argument (4) above, we would like to point out that the significance of United States v. Wood, supra, is not properly at issue at this stage of the proceedings and is only cited in appellant's motion papers to provide the Court with notice of the primary legal issue to be considered when the appeal from the denial below of a temporary injunction is heard. The relief sought at this juncture is a stay pending appeal and not a temporary or interlocutory injunction from the district court. Suffice it to say at this point that in our view counsel for the defendants share with Judge Mize a misreading of the Wood case, for the decision in that case was not based primarily upon the fact that the plaintiff was the United States, but rather upon the fact that in the circumstances failure to grant interlocutory relief would clearly have resulted in the mooting of the plaintiff's case. The same is true of the present situation.

CONCLUSION

In light of the foregoing, it is respectfully submitted that this Court should (1) issue an order granting appellant permission to proceed in this action in forma pauperis and (2) stay the prosecution below until the appeal from the order below denying a temporary injunction has been heard and decided.

Respectfully submitted,

O'DWYER & BERNSTIEN
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Paul O'Dwyer, Esq.
of Counsel

R. JESS BROWN
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Office & P. O. Address
125-1/2 North Farish Street
Jackson, Mississippi

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ADELE FALCONE, being duly sworn, deposes and says, that deponent is not a party to the action, is over 21 years of age and resides at 1523-59th Street, Brooklyn, New York. That on the 8th day of July, 1964, deponent served the within BRIEF FOR APPELLANT upon THOMAS H. WATKINS, attorneys for defendant, at 800 Plaza Building, Jackson, Mississippi, and WILL S. WELLS, attorney for defendants, at Department of Justice, State of Mississippi, Jackson 2, Mississippi, the addresses designated by said attorneys for that purpose by depositing same enclosed in a postpaid properly addressed wrapper, in official depository under the exclusive care of the United States post office department within the State of New York.

Sworn to before me, this
8th day of July, 1964.

Adele Falcone
Adele Falcone

Frank Durkan

FRANK DURKAN
Notary Public, [illegible] New York
No. [illegible]975
Qualified [illegible] County
Commission [illegible]s March 30, 1966

MSS 546 SEDFRE

Chaffee, Lois vs Johnson, Paul R. et al 1966
(Part II)

Box 35
Folder 10

State Historical Society of Wisconsin

Please Retain Original Order

Statement

On June 13, 1963, Petitioner, Lois Chaffee, a teacher and civil rights worker for the Congress of Racial Equality, was arrested for disorderly conduct by Deputy Chief J. L. Ray of the Jackson, Mississippi, police force. She was arrested when she approached Deputy Chief Ray and requested medical attention for a Negro child who had become hysterical when she was struck with a billyclub by policemen who had charged, on instructions from Ray, into a crowd of noisy and critical Negro onlookers which had gathered to witness the arrest of a group of Negro children marching in the street. The children had undertaken a silent march to protest the murder two nights earlier of Medgar Evers, ~~a~~ the well-known civil rights leader in Mississippi.

At Petitioner's trial for disorderly conduct, the prosecutor (Respondent Jack Travis) emphasized the fact that she was involved in civil rights work and had taught during the past year at a local Negro college. The judge (Respondent Russell D. Moore, III) became inordinately interested in the ~~completely~~ legally irrelevant fact that Petitioner was in fact a civil rights worker and had been present at the scene of civil rights demonstrations some weeks earlier in Plaquemines, Louisiana. During the course of Petitioner's testimony, she stated that she had been standing near the curb of the street when the marching children were arrested and that she had seen the arresting policemen strike the children with their billyclubs when they refused to release the sticks of the American flags they were carrying. Counsel have obtained two affidavits substantiating the fact that police billyclubs were used on the children. The complaint sets forth proof ~~that~~ by photograph that violence was used by the police against at least one adult.

Respondents do not dispute the fact that the scene of Petitioner's arrest was one of confusion and violence or that there was much swinging of police billyclubs among the crowd of chanting and critical Negro onlookers. Indeed, newspapers throughout the country carried pictures (attached as exhibits to the complaint herein) of four policemen beating one John Salter with their billyclubs. Respondents do not dispute the fact that Salter was struck on the head and knocked to the ground bleeding. They do not dispute that other members of the crowd were struck by the police.

However, at Petitioner's trial for disorderly conduct, which took place four months after the events in question, Judge Moore and Prosecutor Travis, the same judge and prosecutor who tried State v. [illegible] — U.S. — reversed by the [illegible] Court after [illegible] to sentence for disorderly conduct, vigorously cross-examined her about her recollection that billyclubs had been used on the arrested children. And, after the jury had returned a verdict of guilty on the disorderly conduct charge, Judge Moore commenced a perjury prosectuion against Petitioner based (as he later testified) upon the fact that Petitioner's testimony conflicted with reports of the events in question which he had read in the local newspapers.

The newspapers had reported the beating of onlookers by policemen, but not the beating of marching demonstrators, so Judge Moore invoked his authority under Section 2479 of the Mississippi Code; made a finding thereunder that Petitioner had "testified in such manner as to induce a reasonable presumption that . . . [she had] wilfully and corruptly testified falsely to some material point or matter;" charged her with perjury; set bail at $2,000; and ordered Prosecutor Travis (whose jurisdiction is limited to misdemeanors) to deliver a transcript of Petitioner's testimony to District Attorney Waller for presentation to a grand jury.

Petitioner was indicted for perjury (Section 2315 of the Mississippi Code of 1942) by a grand jury of the Circuit Court for the First Judicial District of Hinds County, Mississippi, during the November, 1963 term of that court. In March, 1964, she commenced the present federal action in the United States District Court for the Southern District of Mississippi in which she alleges violations by the Respondents of her rights under the

Bail having been set at $1,000.00 she remained in jail - days before the amount could be raised since, as is known, civil rights workers must raise cash bail in Mississippi.

Judge Moore then vigorously pressed the prosecution by calling Waller to encourage presentation of the case to a grand jury.

following federal statutes: (1) 42 U.S.C. § 1983 (Rev. Stat. § 1979), (2) 42 U.S.C. § 1985 (Rev. Stat. § 1980), (3) 42 U.S.C. § 1986 (Rev. Stat. § 1981), (4) 42 U.S.C. § 1981 (Rev. Stat. § 1977), and (5) 42 U.S.C. § 1971 (Rev. Stat. § 2007); and under the First, Fifth, Sixth, Eighth, Thirteenth, Fourteenth, and Fifteenth Amendments to the Federal Constitution. The complaint alleges that Respondents have undertaken the instant perjury prosecution in bad faith for the purpose of suppressing civil rights activity and without "probable cause" as required by the Fourteenth Amendment. The complaint also alleges that the prosecution was intended to have and has had a chilling effect upon freedom of speech and upon due process of law in federal and state courts in Mississippi, because it has made civil right~~s~~ workers afraid to testify in civil rights cases for fear that unfounded perjury prosecutions may be commenced against them and has made witnesses afraid to testify on their behalf. ¶ Petitioner contends that this prosecution has no substantial likelihood of resulting in a valid conviction because (1) the indictment is invalid on its face as contrary to the principles of Russell v. United States, 369 U.S. 749 (1962), (2) the indictment is invalid for the further reason that it was returned by a grand jury from which women were systematically and completely excluded by operation of Mississippi law, and (3) the prosecution is invalid because it was commenced under a statute which (a) is void-for-vagueness and (b) violates due process in that the state judge who originates a charge of perjury also sets bail and rules upon the existence of "probable cause" for the charge and therefore acts both as prosecutor and as judge. In the complaint, Petitioner seeks (1) an injunction permanently restraining the prosecution, (2) a temporary injunction restraining the prosecution pending the outcome of this case, and (3) damages for violations of her federal rights which have already resulted from the prosecution.

After a hearing, the district court, on May 18, 1964, denied Petitioner's motion for a temporary injunction upon the following grounds: (1) injunctive relief against a state prosecution is forbidden by 28 U.S.C. § 2283, (2) such relief cannot be granted because Petitioner has not exhausted her state court remedies, and (3) Petitioner did not produce at the hearing proof of a conspiracy among Respondents to violate Petitioner's civil rights which would justify the injunctive relief requested even if the Court had power to issue it.[1] Petitioner appealed from that ruling upon the following grounds: (a) injunctive relief is not forbidden in the present case because 42 U.S.C. § 1983 and related civil rights statutes constitute a statutory exception to 28 U.S.C. § 2283; (b) under the holding in Dombrowski v. Pfister, 380 U.S. 479 (1965), and related cases, exhaustion of state remedies is not required in cases involving (i) "chilling effects" upon freedom of expression and (ii) circumstances in which defense of a state criminal action will not adequately protect the constitutional rights involved; (c) the complaint states a substantial claim under 42 U.S.C. § 1983 (which does not require proof of conspiracy) as well as a claim under 42 U.S.C. §.1985 (under which conspiracy must be proved); (d) the paucity of affirmative evidence at the hearing was due to an erroneously narrow view of the issues taken by the district judge and a refusal on his part to permit examination of Respondents on the question of the relationship between their admitted personal commitment to racial segregation and the motivation for the prosecution; (e) despite the paucity of evidence at the hearing, the complaint and the testimony at

---

[1] The district court hearing took place prior to the highly pertinent decision of this Court in Dombrowski v. Pfister, supra. Therefore, counsel did not have the benefit of the Dombrowski decision in preparing evidence for the hearing, and the district court did not have the benefit of Dombrowski in deciding what issues and what evidence are material in an action under 42 U.S.C. § 1983. For example, the district court considered completely irrelevant proof offered by Petitioner of the "chilling effects" of this prosecution upon the free-speech activities of civil rights workers in Mississippi and upon the willingness of witnesses to testify in civil rights cases. That court also appears to have regarded "conspiracy"

(footnote cont'd)

as a necessary element of a claim under § 1983, a view apparently shared by the Fifth Circuit, as indicated by the decision below. We submit that remand for a new hearing in light of Dombrowski may be advisable should this petition be denied. If remand were to be ordered, we would request that the district court be instructed to rule on such questions of law as this Court deems material.

the hearing present a substantial claim under the federal civil rights statutes under the holding of Dombrowski v. Pfister, supra; and (f) denial of a temporary injunction will operate as a dismissal of the injunction aspect of this case and render moot the request herein for permanent injunctive relief.

On appeal, the Court of Appeals for the Fifth Circuit affirmed the ruling below upon the sole ground that Petitioner had failed to produce at the district court hearing sufficient evidence of a conspiracy among the Respondents to justify issuance of a temporary injunction against the state prosecution. The circuit court expressly declined to rule on any of the other legal and factual questions involved in the appeal. Inexplicably, the circuit court opinion makes no reference to Dombrowski v. Pfister. It does not refer to Petitioner's argument, based upon Dombrowski, that she has stated a claim under 42 U.S.C. § 1983, which does not require any proof of conspiracy. Nor does that opinion refer to Petitioner's contentions (1) that the instant indictment is unconstitutionally vague and therefore void on its face, (2) that the indictment is void because women are completely disqualified from serving upon grand and petit juries in Mississippi by operation of law, (3) that the statute under which the prosecution was commenced (§ 2479, Miss. Code) is void-for-vagueness, (4) that the procedure set up in § 2479 violates

Fourteenth Amendment due process, and (5) that the record of Petitioner's disorderly conduct trial shows that there was no substantial indication of wilfull and maliciously false testimony which would amount to "probable cause" and justify a perjury prosecution, with its resulting repressive impact upon freedom of expression and the effective administration of justice in Mississippi.

IN THE CIRCUIT COURT FOR
HINDS COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI,

PLAINTIFF

V. No. 17908

LOIS CHAFFEE,

DEFENDANT

ORDER

The defendant having pleaded "nolo contendere" to a misdemeanor herein, to wit:"conspiracy to interfere with a trial" and this Court having accepted said plea and having sentenced the defendant to pay a fine of five hundred dollars ($500.00) plus court costs and said fine and costs having been paid on August 3 , 1966,

IT IS HEREBY ORDERED:

That the appearance bond in the amount of five thousand dollars ($5,000.00) posted on behalf of the defendant herein is hereby discharged and shall be from this date forth null and void.

Dated this 29 day of August, 1966.

M. M. McGOWAN
CIRCUIT JUDGE

ATTEST A TRUE COPY
This 29th day of August 1966
H. T. ASHFORD, JR., Circuit Clerk
By D.C.

Lois Chaffee, Cert Petition - Draft

Questions Presented

(1) Does the ruling of the court below conflict with the holding of this Court in Dombrowski v. Pfister, 380 U.S. 479 (1965)?

~~(a) Will the denial of a temporary injunction operate, in effect, as a dismissal of the injunction aspect of this case?~~

(~~b~~2) Do the complaint, related papers, and the record herein present a substantial claim under the Civil Rights Act (Rev. Stat. § 1979 (1875); 42 U.S.C. § 1983) and present "special circumstances" involving due process of law and constitutionally protected expression which justify the issuance of an order (i) forbidding prosecution under the instant indictment and (ii) enjoining further prosecution of petitioner pending final adjudication of this case?

(~~2~~3) Does the Civil Rights Act (Rev. Stat. § 1979; 42 U.S.C. § 1983) constitute a statutory exception to 28 U.S.C. § 2283 (1958)?

(~~3~~4) Is the state indictment herein invalid on its face for failure to state the charge therein with sufficient specificity to satisfy the requirements of the Sixth, Fifth, and Fourteenth Amendments?

(4) Does the fact that women were systematically and completely excluded from selection for the state grand

jury which indicted appellant (a woman) by operation of Section 1762 of the Mississippi Code of 1942 render the instant indictment void as unconstitutionally issued?

(~~5~~6) Does it violate a witness's right to Freedom of Speech for a state to base a perjury indictment upon statements critical of acts allegedly done by police officers?

(~~6~~7) Is Section 2479 of the Mississippi Code of 1942 (headed "Palpable perjury") void for vagueness?

(~~7~~8) Does the procedure set up in Section 2479 of the Mississippi Code of 1942, which permits the judge originating a perjury charge to fix bail and to order the accused imprisoned pending its production without submitting the facts to an independent judicial officer for a hearing and ruling upon the existence of "probable cause" for the charge, violate the Fourteenth Amendment due process?

DRAFT
BRB
1/17/66

III

This case raises serious questions concerning the degree of clarity and specificity which the Fourteenth, Fifth, and Sixth Amendments required of state indictments, for the instant state indictment is patently in violation of the principles stated in Russell v. United States, 369 U.S. 749 (1962), because it fails to indicate on its face the materiality of the allegedly perjured statements to the trial at which they were given.

Unless the allegedly perjured statements were "material", they can not constitute perjury under Mississippi law (§ 2314, Miss. Code). The instant indictment contains the allegedly perjured statements, but it does not state the nature of the trial at which they were given. It is therefore impossible to tell from the face of the indictment whether or not the statements in question were, as a matter of law, "material." For this reason, the indictment clearly violates the rule established in Russell for federal indictments. The novel question raised on this appeal is whether or not the principles of Russell apply to state indictments by operation of the "due process clause" of the Fourteenth Amendment. We submit that this is a question of substantial importance to the administration of perjury laws throughout the fifty states, most of which contain a requirement of "materiality" in some form.

IV

Women were systematically and completely excluded from the grand jury which indicted appellant by operation of Section 1762 of the Mississippi Code of 1942. This fact is not denied by Respondents, for their entire case in this proceeding is based upon the assumption that the instant indictment was returned in full compliance with all applicable laws of Mississippi. However, although the complaint herein attacks the indictment as invalid under the Fourteenth Amendment, the existence of Section 1762 did not come to the attention of Petitioner's counsel until after the district court hearing below. For that reason, the operation of Section 1762 in this case was not established on the record below as the basis for a specific Fourteenth Amendment argument.

In the circumstances there would seem to be no need for proof that women were not eligible for jury service and were in fact ~~not selected for~~ excluded from service on the grand jury which indicted Petitioner, since such proof would simply demonstrate facts which are self-evident and not disputed. Section 1762 limits eligibility for jury service in Mississippi courts to men and the instant grand jury was selected in compliance with it. If such proof is deemed necessary, this case should be remanded to the district court so that it can be presented.

V

The present prosecution was commenced under Section 2479 of the Mississippi Code. That section is unconstitutional on its face for three ~~four~~ separate reasons: (1) it is so extraordinarily vague that a witness of ordinary intelligence is not informed thereby what kind of testimony may bring its punitive provisions into play and cause the commencement of a perjury prosecution; (2) it is fundamentally unfair to permit the judge who originates a charge of perjury allegedly committed before him to rule upon the existence of probabl~~y~~e cause for the charge, since such a procedure makes the same man both prosecutor and judge; (3) the statute does not require adequate notice and hearing prior to the commencement of a prosecution, since it permits the incarceration of a witness on a charge of perjury immediately after the challenged testimony was given without providing any time for the collection of evidence with which to rebut the charge.

We submit that the commencement of this prosecution under such a patently unconstitutional statute places a constitutional taint upon all of the subsequent proceedings and invalidates them.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21638

---x

LOIS CHAFFEE,

Appellant, :

-against-

PAUL B. JOHNSON, JR., individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT, :

Appellees.

---x

BRIEF FOR APPELLANT

Respectfully submitted,

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INDEX

SUBJECT INDEX: Page

STATEMENT OF THE CASE 1

A PARTIAL LIST OF ISSUES WHICH WILL BE PRESENTED FOR DETERMINATION AT TRIAL ON THE MERITS HEREIN 23

ISSUES PRESENTED BY THE PRESENT APPEAL 28

ARGUMENT:

I A FEDERAL DISTRICT COURT HAS POWER TO GRANT A TEMPORARY INJUNCTION TO STAY A STATE CRIMINAL PROSECUTION WHERE A THREAT OF IMMEDIATE AND IRREPARABLE INJURY EXISTS AND WHERE A SUBSTANTIAL QUESTION HAS BEEN RAISED AS TO THE CONSTITUTIONALITY OF THE PROSECUTION UNDER THE FEDERAL CIVIL RIGHTS STATUTES 31

1. The district court below has power to grant a permanent injunction if it is ultimately decided that the state prosecution here under attack violates appellant's constitutional rights. 31

2. 28 U.S.C. § 2283 does not bar injunctive relief under the federal civil rights statutes in an appropriate case 33

3. Where a substantial claim for equitable relief staying a state prosecution is stated under the federal civil rights statutes, the district court must grant an interlocutory order if such is necessary to prevent irreparable injury and the mooting of plaintiff's claim 34

II A SUBSTANTIAL CLAIM FOR RELIEF UNDER THE FEDERAL CONSTITUTION AND CIVIL RIGHTS STATUTES HAS BEEN PRESENTED TO THE COURT BELOW IN THIS CASE 39

XERO COPY XERO COPY XERO COPY XERO COPY

INDEX: (Continued)

Page

III IRREPARABLE INJURY WILL RESULT IF A TEMPORARY INJUNCTION IS NOT ISSUED IN THIS CASE, AND APPELLEES WILL SUFFER NO SIGNIFICANT HARM IF SUCH AN INJUNCTION IS ISSUED 45

IV HABEAS CORPUS CASES RELIED UPON BY THE COURT BELOW ARE INAPPLICABLE TO THE FACTS OF THE PRESENT CASE 47

CONCLUSION 50

CERTIFICATE 53

TABLE OF CASES:

Aelony v. Pace, *Harris v. Pace*, (3 Judge Ct. M.D. Ga., Nov. 1,1963) 31, 33

A. F. of L. v. Watson, 327 U.S. 582 (1946) 32

Airport Parking, Inc. v. New Orleans Aviation Board, 185 F. Supp. 736 (E.D. La., 1960) 46

Baggett v. Bullitt, 377 U.S. 360 (1964) 8

Bailey v. Patterson, 323 F.2d 201 (5th Cir. 1963) 31

Bergen Drug Company v. Parke, Davis & Company, 307 F.2d 725 (3d Cir. 1962) 46

Bouie v. Columbia, 378 U.S. 347 (1964) 8

Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala., No. Div., 1956), *aff'd*, 352 U.S. 903 (1956) 31,32,33

Brown v. Rayfield, 321 F. 2d 96 (5th Cir. 1963) *cert. denied*, 375 U.S. 902 (1963) 47

XERO COPY XERO COPY XERO COPY XERO

INDEX: (Continued)

Page

Bush v. Orleans Parish, 194 F. Supp. 182 (E.D. La, 1961) 31

City of Houston v. Dobbs Co., 232 F.2d 428 (5th Cir. 1956) 31

Cline v. Frink Dairy Co., 274 U.S. 445 (1927) 32

Cramp v. Board of Public Institution, 368 U.S. 278 (1961) 8

Denton v. City of Carrollton, 235 F.2d 481 (5th Cir. 1956) 31

Dombrowski v. Pfister, 227 F. Supp. 556 (3 Judge Ct., E.D. La., 1964), probable jurisdiction noted, 6/15/64, 84 S.Ct. 1881 34

Due v. Tallahassee Theatres, Inc. 333 F.2d 630 (5th Cir. 1964) 12

Durkin v. John Hancock Mutual Life Insurance Company, 92 F. Supp. 893 (S.D.N.Y. 1950) . . . 46

Hague v. CIO, 307 U.S. 496 (1939) 32

Hale v. Bimco Trading Co., 306 U.S. 375 (1939) 32

Hynes v. Grimes Packing Co., 337 U.S. 86 (1949) 32

Jordan v. Hutcheson, 323 F.2d 597 (4th Cir. 1963) 31

Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957) 35,36,38

Louisiana Ex Rel Gremillion v. NAACP, 181 F. Supp. 37 (E.D. La., New Orleans Div., 1960), aff'd, 366 U.S. 293 (1961) 31

McNeese v. Board of Education, 373 U.S. 668 (1963) 33,38

Moore, Commentary on Judicial Code, 408-9 31

INDEX: (Continued)

Page

Morrison v. Davis, 252 F.2d 102 (5th Cir. 1958) 31,32,33,37

Perry v. Perry, 190 F.2d 601 (D.C. Cir. 1951) 46

Pierce v. Society of Sisters, 268 U.S. 510 (1925) 32

Russell v. United States, 369 U.S. 749 (1962) 10

Terrace v. Thompson, 263 U.S. 197 (1963) 32

Truax v. Reich, 239 U.S. 33 (1915) 32

United States v. Wood, 295 F.2d 772 (5th Cir. 1961) 28,31, 33 34,36, 38 49

Watson v. Memphis, 373 U.S. 526 (1963) 38

Yakus v. United States, 321 U.S. 414, 440 (1944) 46

OTHER AUTHORITIES:

Constitution of the United States

First Amendment 2,39
Fifth Amendment 2,11,26
Sixth Amendment 2,11,26
Eighth Amendment 2
Thirteenth Amendment 2
Fourteenth Amendment 2,7,8,26 39,40
Fifteenth Amendment 2

Federal Statutes

28 United States Code
Section 1331 2
Section 1332 2
Section 1343 2,15,24,37
Section 2283 . . . . 2,28,33,35 38,48
Section 2254 47,48,49

INDEX: (Continued)

Page

42 United States Code

Section 1971 36,37
Section 1981 15,19
Section 1983 . . . . 2,15,24,33 36,37,44
Section 1985 . . . . 2,14,15,24 37
Section 1986 14,24,44

Federal Rules

Rule 8(f) 44
Rule 23 51

Mississippi Code of 1942, Annotated (Recompiled 1956)

Section 2479 . . . . 7,8,9,16 40,41,42
Section 2315 . . . . 9 ,16,41

APPENDICES:

"A" Opinion Below 54
"B" Affidavit of Melvin Schnapper 55
"C" Affidavit of Mrs. Jeannette King . . . 56
"D" Affidavit of Roger Willian Sharp . . . 57
"E" Indictment 58
"F" Text of Section 2315 of Mississippi Code of 1942 59
"G" Text of 28 U.S.C. § 2254 60

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 21638

---x
LOIS CHAFFEE, :
Appellant, :
-against- :
PAUL B. JOHNSON, individually and as Governor of the State of Mississippi, ET AL., :
Appellees. :
---x

BRIEF FOR APPELLANT

STATEMENT OF THE CASE

Appellant, Lois Chaffee, was indicted for perjury by a grand jury of the Circuit Court for the First Judicial District of Hinds County, Mississippi, during the November, 1963, term of that Court. In March, 1964, appellant commenced this action in the United States District Court for the Southern District of Mississippi in which she seeks (1) an injunction permanently restraining defendants from prosecuting the state perjury suit on the ground that continuation of the prosecution will constitute a prolonged and compounded violation of her rights under the Federal Constitution and the federal civil rights statutes cited in the complaint as well as a violation of the rights

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of other voter-registration workers and of unenfranchised Negroes generally in Mississippi, (2) a temporary or interlocutory injunction to preserve the jurisdiction of the district court below over the injunction aspect of this proceeding until trial can be had on the merits of appellant's case, and (3) damages from the defendants for the violations of her constitutional and federal statutory rights which have already resulted from said prosecution, including seventeen days spent in a Jackson, Mississippi, jail.

Jurisdiction of the district court herein is founded upon the appropriate provisions of 28 U.S.C. § 1343, 42 U.S.C. § 1985, 42 U.S.C. § 1983, 28 U.S.C. § 1331, 28 U.S.C. § 1332, and under the Federal Constitution, and in particular under the First, Fifth, Sixth, Eighth, Thirteenth, Fourteenth, and Fifteenth Amendments thereto.

In an opinion dated May 18, 1964, the court below denied appellant's petition for a temporary injunction. (A copy of that opinion is attached hereto as Appendix A.) The present appeal is from that decision.

If an interlocutory injunction is not granted herein, appellant will be tried immediately for perjury by appellees, jurisdiction below over that aspect of this case in which an injunction preventing such trial is sought will be forever lost, and irretrievable harm will have been done to appellant, by the conduct of the

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trial, which no amount of money damages will be able to recompense should appellant's contentions, or some of them, ultimately be sustained.

The facts underlying this appeal are stated and some of the legal issues raised by them are set forth hereafter.

On June 13, 1963, a large contingent of armed and uniformed men (estimated by witnesses to have numbered more than one hundred) supervised by Deputy Chief of Police J. L. Ray of the Jackson, Mississippi, Police Force, broke up a silent and orderly march of protest undertaken on Rose Street in Jackson by a group of Negro children to protest the killing two nights earlier of Medgar Evers, a well-known civil rights worker in Mississippi. Basing his action upon the fact that the marchers did not have a "parading permit" as sometimes required by local law enforcement officials, Deputy Chief Ray ordered his men to surround the marchers, to arrest them, and to load them into waiting garbage trucks for transportation to a temporary jail that had been set up at the local fairgrounds. (The events of that day and subsequent pertinent events are described in the complaint herein at pp. 5-9. Events of June 13, 1963, are also described in the affidavit of John C. Young (attached to said complaint as Exhibit B); in the affidavit of John Randall Salter, Jr. (attached to said complaint as Exhibit C); and in the affidavits of Melvin Schnapper, Mrs. Jeannette King, and Roger William Sharp (photostatic copies of which are attached hereto as Appendices B, C, and D, respectively).)

The reports of policemen present and those of other eyewitnesses to the events differ as to the nature and amount of force used by the policemen to take the American flags from those marchers who carried them and to load the marchers into the garbage trucks. (Compare affidavits of John C. Young, Melvin Schnapper, and Mrs. Jeannette King, supra, with testimony of Chief J. L. Ray, officer Richard Hart, and C. R. Wilson, in transcript of trial in City of Jackson v. Lois Chaffee, No. 13, 794, on October 15, 1963, (T-1) at pp. 4-22, 23-26, 92-95, 100-104.) While the children were being arrested, appellant was standing on the sidewalk, apparently a few feet from the place where the arrests were taking place, (T-1, p. 70).

When the arrest and removal of the children was completed, or nearly so, the police, at the instruction of "Chief" Ray, turned their attention to the attendant crowd (some members of which had been shouting encouragement to the children and such things as "Freedom" and "Don't give up the flag!") and charged into it in the direction of a near-by house the porch of which was then occupied by two white men (Rev. R. Edwin King and John Salter, Jr.), appellant (a white girl), and perhaps as many as thirty Negroes, (T-1, p. 27), many of whom had been driven onto the porch as the police drove them back from the street. The house belonged to Mrs. Margaret

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Myles, and her two children, Tommy and Caroline, were on the porch. When the police charged the porch, on instructions from "Chief" Ray to arrest everyone there (see affidavit of Roger William Sharp, and T-1, pp. 13, 38), there was much swinging of billy clubs, and a confused and violent scene was the result. (See affidavits referred to above.) Salter was seized by several policemen, who beat him severely about the head with their billy clubs. (See Exhibits C & D to complaint and affidavit of Sharp, cited supra.) Their blows caused lacerations which bled profusely and required stitches when medical treatment was administered. Tommy Myles was arrested, and his sister Caroline, who had been struck by policemen, sat in the doorway to the house screaming hysterically.

When appellant called for the policemen to do something to aid the screaming, hysterical child, her pleas were ignored, and she was arresed by "Chief" Ray for disturbing the peace. (See Complaint, p. 8, T-1, p. 8.)

At her trial for disturbing the peace, the only issue for decision by the jury was whether or not appellant had participated in the chanting and calling being done by some of those in the crowd around her. Appellant responded in rather a rambling and discursive way to the questions of defense counsel (T-1, pp. 68-78), and at one point, in describing the arrest of the marchers - - - as part of an explanation of why she was

does this statement make the testimony relevant?

not chanting with the crowd - - - appellant stated that:

> "The children would hold on to the flags, and they were lined up. And they had two police going down, getting on either side, one at the time, and the police would grab their flags, and they had their sticks ready, and if the children would hold on to their flags, they crack their sticks; - - in effect, everybody who was holding on to their flag was getting their head cracked, and being clubbed down, and - - - ."

From that point, both the presiding judge and the prosecutor repeatedly drew out appellant's testimony on this point, notwithstanding its complete and utter irrelevance to the trial. She maintained consistently throughout her testimony that the police had struck only those children who held onto their flags (apparently as a means of encouraging release of the flag sticks). And upon further questioning, she stated that she had seen clearly only one marcher struck on the head a single blow which knocked him to the ground, although she saw three or four other incidents which she was "sure" involved striking.

Appellant was found guilty by a jury of disturbing the peace and given a sentence of 60 days. The case is presently on appeal. After the jury had returned its verdict, the presiding judge (appellee Russell D. Moore, III) instructed the prosecuting attorney (appellee Jack Travis) to obtain a copy of the trial transcript and deliver it to appellee District Attorney Waller for presentation to a grand jury as the basis for a perjury charge.

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The perjury prosecution was commenced by Judge Moore when he ordered appellant to be seized and bound over to the grand jury to be released only upon the posting of $2,000 bond. The bond was posted forthwith. Judge Moore took his action pursuant to Section 2479 of the Mississippi Code of 1942 Annotated (Recompiled 1956), "Palpable perjury," which provides as follows:

> " Whenever it shall appear to any court that a witness or party who had been sworn or examined in any case, matter, or proceeding pending before the court, has testified in such manner as to induce a reasonable presumption that he has wilfully and corruptly testified falsely to some material point or matter, the court may immediately commit such party or witness, by an order of process for that purpose, to prison, to take bond or recognizance with sureties for his appearing and answering to an indictment for perjury."

*

Appellant will contend at trial on the merits of this case, that this initial order by Judge Moore constituted a violation of due process of law under the Fourteenth Amendment to the Federal Constitution the occurrence of which invalidates all of the proceedings that followed. She will so contend, first, on the ground that said statute is unreasonably vague as written in that it does not, either on its face or as interpreted in this case, adequately forewarn a witness in the Courts of Mississippi in "terms susceptible of objective measurement" of the kind or kinds of "manner" of testifying that may "induce a reasonable presumption" into the mind of the judge that wilfully and corruptly false testimony has been given before him. Cramp v. Bd. of Public Instruction, 368 U.S. 278, 286 (1961); Baggett v. Bullitt, 377 U.S. 360 (1964); Bouie V. Columbia, 378 U.S. 347 (1964). Because of the indeciferable vagueness of its wording, "men of common intelligence must necessarily guess at . . . (the statute's) meaning and differ as to its application." Baggett v. Bullitt, supra. The result is that a trial judge in Mississippi is given power under Section 2479 to imprison a witness before him at the least until bond is raised and if bond cannot be raised, until action by the grand jury or trial, without any reasonable possibility of effective review of his action. This is so because the "manner" of a witness's testimony, or most of it, dissipates into thin air once the words are uttered and never appears on the written record.

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* The following two paragraphs do not state facts. They explain issues of law raised by Judge Moore's order for determination at trial on the merits herein. Counsel regards such explanation as pertinent to the issues raised by the present appeal.

Second, appellant will contend that even if Section 2479 is not void-for-vagueness, Judge Moore's application for it in the circumstances of this case constituted a violation of Fourteenth Amendment due process for the reason that the allegedly perjured testimony of appellant before him shows no substantial signs of intentional falsehood amounting to "probable cause", but rather indicates candidly and ingenuously presented recollection that remained essentially consistent despite vigorous cross-examination, though somewhat confused in detail and manner of presentation.

After appellee Jack Travis delivered the transcript of appellant's testimony before Judge Moore to appellee William Waller, District Attorney for Hinds County, an indictment was returned charging appellant with perjury in making certain quoted statements in her testimony on October 15, 1963.* That indictment (copies of which are attached hereto as Appendix E and to the complaint herein as Exhibit A) appears to charge appellant with a violation of Section 2315 of the *Mississippi Code of 1942* (the text of which is attached hereto as Exhibit F), which, like Section 2479, *supra*, provides that in order for testimony to constitute the crime of perjury, it must (a) have been wilfully false and (b) have related to a "material matter."

The statute she is charged with violating is not cited in the indictment. The indictment does not state the nature of the "misdemeanor in Hinds County" at the trial of which appellant was "under oath as a witness" when her allegedly false testimony was given, nor does it state the "material matter" at that trial to which appellant's allegedly false testimony was

exclude

(a) Negroes

(b) women

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* Counsel for appellant believes there is a strong possibility that investigation preliminary to trial will disclose that Negroes were systematically excluded from the process of selection for service on grand juries in Hinds County at the time of appellant's indictment and for immeasurable period prior to that time, Counsel also believes that such investigation will disclose that women are systematically excluded from selection for juries in Misssissippi by operation of law. Counsel for appellant is of the opinion that if either such exclusion was indeed the practice, it constituted a violation of her constitutional rights and rendered the indictment returned against her legally meaningless.

relevant. It is impossible to tell from the face of this indictment whether or not appellant's allegedly purjurous testimony was in any way relevant to any "matter," "material" or otherwise, that had anything at all to do with the trial, and because of this, appellant will contend at trial herein, the indictment violates basic constitutional principles and is therefore a legal nullity. Russell v. United States, 369 U.S. 749 (1962).

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The basic principle underlying the Supreme Court's decision in Russell and acknowledged in the majority opinion of Mr. Justice Stewart therein can be stated as follows:

Where an indictment is returned by a grand jury under a statute requiring, as an element of the crime charged, that the allegedly criminal behavior of the accused have been done with respect to a point or matter "material" or "pertinent" to a legislative or judicial inquiry, then, in order to avoid conflict with basic constitutional principles, the indictment must indicate clearly on its face what the "subject matter" of the inquiry involved was, so that the materiality of the accused's behavior (or lack thereof) can be

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* The following three paragraphs explain the substantive issues of law with respect to the application of Russell to the present case.

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deduced by reasonable intellectual effort from the language of the indictment.

It is true that the narrow issue in Russell involved interpretation of a federal statute (2 U.S.C. § 192). But it is clear from the majority opinion of Mr. Justice Stewart (speaking for six members of the Court) that the basic principles implicit in the policies of the Fifth Amendment's charge-by-indictment and due process clauses and of the Sixth Amendment's provision that every person accused of crime has a right to be informed of the nature and cause of the charge against him were at the heart of the reasoning which led the Court to its decision.

Appellant's contention is that either all of those three clauses are made applicable to the States by the Fourteenth Amendment or the policies embodied in them, as recognized by the Supreme Court in Russell, are embodied also in the values inherent in the due process clause of the Fourteenth Amendment.

At her arraignment, appellant pleaded not guilty. Thereupon, her bail was raised from $2,000. to $5,000. The additional $3,000 could not be raised. Appellant was then incarcerated in the Jackson jail for seventeen days until friends could raise the additional $3,000.

Her trial was repeatedly postponed. This action was commenced in March, 1964.

On April 20, 1964, a hearing was held in the Court below before Judge Mize on the question of whether or not a temporary injunction should issue. (The transcript of testimony at that hearing is referred to hereafter as "T-2".)

The evidence produced on behalf of appellees consisted almost exclusively of denials by each of them that he did not at any time overtly conspire with any of the other defendants for the specific purpose of denying appellant her constitutional rights. (See, Due v. Tallahassee Theatres, Inc., 333 F.2d 630, 632 (5th Cir. 1964).) Appellee Moore admitted that he ordered appellant to be "bound over" upon $2,000 bond on a charge of perjury and that he had various conversations with appellee Jack Travis during which he instructed Travis to obtain a copy of the transcript of appellant's testimony and turn it over to appellee William Waller for presentation before a grand jury. Appellee Moore admitted also that he had followed up his instructions to Travis by asking Waller's assistant, John Fox, whether he had received the record and presented it to the grand jury. There was no indication in the testimony of Travis or Waller that either of those two prosecuting attorneys ever bothered to make any determination as to whether or not there was a substantial enough indication of intentional falsehood in the transcript to justify a grand jury presentation under constitutional standards of due process. It appears that each of them simply regarded himself as a mechanical conduit between Judge Moore and the grand jury. Yet each of them had extensive experience with criminal prosecutions, and each of them must have been aware of the extraordinary character of Judge Moore's action and of the possibility that he might have allowed himself to become emotionally involved in the case and permitted his emotional involvement to lead him into a serious error of judgment. Indeed, Travis testified that he had been City Prosecutor for seven years and had never before seen or heard of such a thing being done.

Thus it appears that there was communication between Moore and Travis and between Moore and Waller's assistant. And it appears that Waller and Travis simply went along and cooperated with Moore's idea of having appellant indicted for perjury. Therefore, if Moore's action and the indictment that resulted from it violated appellant's rights under the Federal Constitution and civil rights statutes, Travis and Waller were involved with him in the violation as assistants, accomplices, or co-conspirators. If Moore had proposed the robbing of a bank or an interstate kidnapping and Travis and Waller had gone along with the idea and assisted him, they would have been guilty of conspiracy even if the crime was never committed, unless they exercised good judgment, perceived the illegality of the undertaking, and refused to go along

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with the proposal. The same principles are applicable here. Moore, Travis, and Waller must be charged with full knowledge of the law. If Moore's action in charging appellant with perjury constituted an abuse of his discretion and a violation of appellant's federal rights to speak honestly in court, to equal protection of the laws, and to be charged with crime only upon a showing of probable cause, then Travis and Waller must be regarded as co-conspirators with him in the violation. As prosecuting attorneys, Travis and Waller had a duty to determine independently of Judge Moore whether or not the prosecution was justified, just as the local United States Attorney and the Attorney General of the United States have. If Waller and Travis failed to perform that duty, it is their personal responsibility. They cannot avoid that responsibility by saying that they did not specifically mean to violate appellant's constitutional rights if they meant to prosecute her knowing that they had no case against her, that such treatment of a misdemeanor defendant is an unheard of happening, and that civil rights activity was the factor that prompted Judge Moore to bring the charge.

With respect to the denials of conspiracy made by the other defendants, it need only be pointed out that 42 U.S.C. § 1986 imposes a duty to prevent the implementation of conspiracies in violation of 42 U.S.C. § 1985 upon anyone with the "power to prevent or aid in preventing" such actions without regard to actual participation in the conspiracy. From the time they were were served with the summons and complaint in this action, each of the appellees other than Moore, Travis, and Waller was under a duty to determine for himself whether or not the prosecution was unconstitutional and, if it so appeared, to aid in stopping it if such aid was within his power. Thus one question for determination at trial on the merits of this case is whether or not the prosecution herein violates any right, privilege, or immunity secured to appellant by the Federal Constitution and laws (28 U.S.C. § 1343, 42 U.S.C. §§ 1983, 1981, 1985), and if it does, another question arises as to which of the defendants had power to aid in preventing the violation.

The testimony of appellees Travis and Moore before the Court below clearly indicates that at appellant's trial before Judge Moore it was Moore and Moore alone who was convinced that appellant had given intentionally false testimony before him with respect to the use of billyclubs by the police. That testimony also discloses that Judge Moore had a deep and abiding interest in the fact that appellant had previously been involved in civil rights activities in Plaquemine, Louisiana, and that knowledge of such activity may have disposed him against her. Travis at no time gave any indication that he had perceived the perjury that Judge Moore found to be "palpable" as required by the pertinent statutes.

Sections 2315 and 2479 of the Mississippi Code of 1942, the applicable criminal statutes, require that in order to establish perjury, it must be proved (1) that the testimony in question was false and that the witness knew it was false when he gave it and (2) that it involved a "material matter" in the proceeding at which it was given. (For text of § 2479, see p. 7 supra. For text of § 2315, see Appendix F hereto.)

The record of appellant's testimony gives not the slightest indication that what she said was false, let alone known by her to be false. Indeed, Judge Moore admitted in testimony before the Court below that it was not the conflict between her testimony and that of the prosecution witnesses (policemen) but what he had read in the local newspapers that convinced him completely that what she said about policemen hitting at least one child in the street was a conscious lie. It is apparently Judge Moore's view that the local press in Jackson, Mississippi, always prints all of the details about every event it reports and never misses or fails to print any part of the action at a scene of violence. With all due respect to the Jackson press, we submit that this indicates a somewhat naive view of what even the most diligent of newspapers can achieve in the way of reporting accuracy and completeness.

But it is even more noteworthy that neither Judge Moore, nor any of the other defendants, nor any of their counsel have even attempted to explain in what way the use of billyclubs in the street some appreciable time before appellant's arrest was "material" to the question of whether she was or was not disturbing anyone when Deputy Chief Ray arrested her. We submit that such an explanation is missing because it cannot possibly be made.

Thus it is perfectly clear that there was no indication whatever of either "palpable perjury" or perjury as to a "material matter" before Judge Moore as required by the applicable statutes of Mississippi and, therefore, that Judge Moore had no substantial or reasonable reason to think that either of those requirements had been met when he charged appellant with perjury and ordered the charge to be brought before a grand jury. The question of whether or not a reasonable basis existed for the charge is not presented for decision on this appeal, but merely pointed out as a serious question to be decided at trial on the merits in this case.

In testimony below, appellee Jack Travis testified that he has been responsible for the prosecution of all misdemeanor trials in Jackson for the last seven years (T-2,p. 86), approximately five or six thousand cases, and that he had never before "received instructions to see to it that a record went to the District Attorney." This Court can take judicial notice of the fact that a substantial portion of those five or six thousand cases must necessarily have involved direct conflicts in testimony between prosecution and defense witnesses. This Court is also as competent as the court below to judge from the transcript of appellant's testimony before Judge Moore whether or not that testimony contains sufficient obvious indicia of conscious falsehood to distinguish it from the ordinary case of conflicting testimonial recollection and to justify its selection from among thousands of other misdemeanor cases for a perjury prosecution. We submit that this case is clearly an unusual and extraordinary one and not just another example of the usual, orderly, and rational criminal processes of the State of Mississippi, and we submit that because appellant is obviously being treated in an unusual and extraordinary fashion, serious questions exist as to whether appellant is being treated differently from other misdemeanor defendants because of her known identity as a civil rights worker. Indeed, if her case was consciously treated differently from other misdemeanor cases not materially distinguishable from it, then she was denied equal protection of the laws regardless of motive. These serious questions require trial on the merits in this case. There is definitely good reason for this Court to suspect that appellant is being treated by the persons responsible for her prosecution in an unusual and extraordinary manner in violation of her constitutional right to equal protection of the laws and equal treatment under them.

42 U.S.C. § 1981, which is relied upon in this action, provides that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to . . . give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons as is enjoyed by white citizens." (Emphasis supplied.) In this case, appellant has been selected from among thousands of others for prosecution because of evidence she gave in court. This is an unusual action on the part of the appellees, taken, by their own admission, solely because of a conflict between appellant's testimony and stories in the local newspapers of Jackson, Mississippi. Surely there is sufficient testimony from the mouths of the defendants in this case to indicate that appellant's right to equal treatment may have been violated.

One of the basic allegations of the complaint herein is that the prosecution of appellant for perjury has and will continue to have the intended effect of depriving appellant and other civil rights workers of their rights to freedom of speech, to use the courts for redress of grievances, and to defend themselves when charged with crime, by virtue of the fact that knowledge of this prosecution, which is widespread among Negroes and civil rights workers in Mississippi, tends to intimidate these people and to make them fearful of testifying in court - - - even in their own defense - - - lest some far-fetched

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conflict between their testimony and what the judge may have read or heard someplace cause them to be tried and possibly convicted for perjury (See complaint pars. 20, 21, 22, 33, 34, 35.)

It is extremely difficult as things are to convince potential witnesses to testify in the courts in Mississippi. In this very case, counsel for appellant contacted many prospective witnesses. Some openly indicated their fear of reprisals and refused to testify; others said they would be in court and then failed to appear. Only the bravest of those contacted actually dared to appear in the federal court.

Yet at the hearing on April 20, 1964, the court below refused to permit testimony offered by counsel for appellant for the purpose of showing such intimidating effects, namely -

(a) that of creating fear, apprehension, and a general feeling of intimidation which discourages civil rights workers and others of the public from giving testimony in defense of themselves and others where civil rights activity is a known factor in the case,

(b) that of intimidating civil rights workers in Mississippi generally by creating apprehension that if they continue or increase their efforts, they may be arrested and unable, because of the threat of unjustified perjury charges, either to testify in their own behalf or to find witnesses

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willing to testify for them, and

(c) that of intimidating Negroes in Mississippi and increasing their fears of attempting to exercise their right to vote and other civil rights by making an example of a well-known civil rights worker.

Another basic allegation of the complaint is that "each of the defendants individually and all of them as co-conspirators are committed personally and officially to racial segregation as a policy, to the exclusion of Negroes from the polls, and to destroying all efforts to increase the Negro vote in Mississippi" and that because of their commitment to racial segregation, the defendants have undertaken the present prosecution in order to discourage voter-registration activities among Negroes. (Complaint, par. 35.) In other words, the charge is that appellant is being cruelly made a pawn in the one-sided social conflict presently being acted out between the segregationist official structure of Mississippi and the Negro civil rights movement in that State.

Yet the court strictly limited cross-examination of defendants to the narrow question of whether they did or did not conspire specifically for the avowed purpose of violating appellant's constitutional rights. Counsel was specifically and repeatedly forbidden to cross-examine defendants with respect to their feelings about racial segregation and the right of Negroes to register and vote.

In view of the position taken by the court below on the admissibility of evidence, it is not surprising that there is little on the record to support appellant's contentions other than the inadvertent but very telling admissions made by defendants themselves on direct examination.

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A PARTIAL LIST OF ISSUES WHICH WILL BE PRESENTED FOR DETERMINATION AT TRIAL ON THE MERITS HEREIN

(1) Was there a sufficient factual basis for Judge Moore's action in initiating the prosecution to satisfy the requirements of Fourteenth Amendment due process?

(2) Did Judge Moore's selection of this case for a perjury charge out of hundreds of misdemeanor trials because of a conflict between appellant's testimony and local newspaper reports constitute a denial to appellant of equal protection of the laws under the Fourteenth Amendment?

(3) If Judge Moore's action in initiating the perjury charge against appellant _did_ violate her rights under the Fourteenth Amendment, did appellees Jack Travis and William Waller possess sufficient knowledge of the unusual and questionable nature of the prosecution that they, as experienced criminal lawyers, must have (or should have) known that such a prosecution constituted a radical departure from the usual, orderly, rational, and impersonal criminal processes of the State of Mississippi? If Travis and Waller knew that the prosecution was such a radical departure from normal criminal processes, did the possession of such knowledge impose upon them a duty not to cooperate with Judge Moore in the prosecution, lest their participation render them subject to injunctive relief and liable to appellant

in damages under 28 U.S.C. § 1343, 42 U.S.C. § 1985, and 42 U.S.C. § 1983? Did the continued participation of Waller in the prosecution after he was informed (by service of the complaint herein upon him) of the dubious constitutionality thereof constitute a willful violation by him of appellant's rights under the federal statutes just cited?

(4) Did failure on the part of those appellees possessing such power to halt or to aid in halting appellant's prosecution once they learned of its existence and circumstances constitute a violation by them of 42 U.S.C. § 1986? If it did, which of them possess the requisite power?

(5) Given the unusual circumstances of this case and the unique problems of civil rights and race relations presently existent in the State of Mississippi, does the perjury prosecution herein threaten substantial harm to freedom of speech and to the process of judicial inquiry in the federal courts in that State by creating a climate of fear and intimidation among witnesses called in cases involving civil rights, particularly when such witnesses are civil rights workers or Negroes? If it does create such a climate of intimidation is there sufficient factual substance to the prosecution, when tested by standards of due process of law, to justify its being allowed to continue notwithstanding its negative effects upon the administration of justice?

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Does the creation of such a climate of intimidation pose an unjustified threat to the constitutional rights of appellant and others of her class as civil rights voter-registration workers in the State by placing an unreasonably heavy burden upon them in making defense against criminal charges through general intimidation of potential defense witnesses?

(6) If the perjury prosecution herein is permitted to come to trial, will it be likely to have an intimidating effect upon civil rights workers and upon disfranchised Negroes in the Jackson area and in Mississippi generally in violation of their constitutional rights?

(7) If the answers to any or all of the questions posed in (5) and (6) above are in the affirmative, are the harmful effects threatened by the prosecution to substantial constitutional rights so serious in nature as to require a permanent injunction forbidding continuance of the prosecution?

(8) Is Section 2479 of the Mississippi Code of 1942 void-for-vagueness?

(9) Does the procedure set up in Section 2479 of the Mississippi Code of 1942, which permits the judge originating a perjury charge to fix bail and to order the accused imprisoned pending its production without submitting the facts to an independent judicial officer for a ruling upon the existence of "probable

cause" for the charge, violate Fourteenth Amendment due process? Was appellant entitled, under the "due process" clause of the Fourteenth Amendment to an independent adjudication of the existence of "probable cause" for a perjury charge as a precondition to presentation of the charge to a grand jury?

(10) Does the indictment herein fail to state the charge against appellant with sufficient specificity to satisfy the requirements of the Sixth, Fifth, and Fourteenth Amendments?

(a) Does the Sixth Amendment's provision that every person accused of crime has a right to be informed of the nature and cause of the charge against him apply to the States through the Fourteenth Amendment's "due process" clause? If it so applies, does the indictment in this case sufficiently inform appellant of the "nature and cause" of the charge against her to satisfy the test of that provision?

(b) Does the Fifth Amendment's charge-by-indictment provision apply to the States?

(11) Were Negroes systematically excluded from the panels from which grand juries were chosen in the Circuit Court of Hinds County, Mississippi, during the November, 1963, term of that court? Were women systematically excluded from those panels by operation of a state or local statute? If such systematic ex-

clusions (or either of them) were practiced, did such practice violate appellant's constitutional right to due process of law?

(12) Were minutes kept of the proceedings before the Hinds County grand jury which resulted in the return of the indictment herein? If such minutes were not kept, does their absence constitute a violation of due process of law for the reason that without such a record it is impossible for a reviewing court to determine either (a) whether or not the grand jury was properly informed that one of its primary functions is to protect accused persons from unjustified prosecutions, or (b) whether the prosecutor exercised proper restraint in presenting the case for the State?

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ISSUES PRESENTED BY THE PRESENT APPEAL

(1) Does the district court below have power to grant a temporary injunction in this action?

(a) Is such relief forbidden by 28 U.S.C. § 2283?

(b) Is the teaching of United States v. Wood, 295 F.2d 772 (5th Cir. 1961), limited to actions brought by the United States?

(2) Has at least one substantial constitutional question or one substantial claim under the federal civil rights statutes been raised in this proceeding which justifies a hearing on the merits herein?

(3) Is a temporary injunction necessary in this case to preserve the jurisdiction of the court below over appellant's claim to permanent injunctive relief?

(4) Will the granting of a temporary injunction in this case be likely to cause any significant amount of harm or injury to the State of Mississippi or to any of the appellees?

(5) Did the judge below misconceive the issues properly before him in this case when he limited proof at the temporary injunction hearing strictly and exclusively to testimony bearing directly upon the existence or non-existence of an overt conspiracy to violate the federal constitutional rights of appellant and appellant only?

(a) Does paragraph 21 of the complaint properly present for determination at trial on the merits herein the question of whether there is or is not in Mississippi at the present time a conspiracy involving some or all of the defendants "to deprive plaintiff, other workers for voter registration and civil rights generally in . . . Mississippi, and all of them as a class of their rights to freedom of speech, of assembly, of association and to petition for redress of grievances as guaranteed to them by the Constitution of the United States? "

(b) Do paragraphs 21, 22, 23 and 25 of the complaint properly present for determination at trial on the merits herein the question of what effect the conduct of appellant's trial for perjury will have on other voter registration workers and upon the unenfranchised Negroes among whom and for whom they are working?

(c) Do the claims stated in the complaint herein sound exclusively in conspiracy, or are individual claims stated against each defendant in addition to the conspiracy claims? If such individual claims are not stated in the complaint, should the complaint be deemed amended to state such individual claims?

(d) Was the court below in error when it refused to allow counsel for appellant to examine appellees with respect to their views on official racial segregation?

(e) Does the complaint herein state a proper class action claim on behalf of appellant as the representative of all civil rights voter registration workers in the State of Mississippi for injunctive relief against harassment consciously engaged in by state officials in excess of their official powers?

i. Does the complaint (para. 2) adequately define the class of persons which appellant represents?

ii. Is proof that local authorities have no difficulty whatever in identifying civil rights workers for purposes of harassment relevant to this question?

iii. If the definition of the class stated in the complaint is too vague, is an acceptable modification thereof possible according to guidelines set by this Court?

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I

A FEDERAL DISTRICT COURT HAS POWER TO GRANT A TEMPORARY INJUNCTION TO STAY A STATE CRIMINAL PROSECUTION WHERE A THREAT OF IMMEDIATE AND IRREPARABLE INJURY EXISTS AND WHERE A SUBSTANTIAL QUESTION HAS BEEN RAISED AS TO THE CONSTITUTIONALITY OF THE PROSECUTION UNDER THE FEDERAL CIVIL RIGHTS STATUTES

1. The district court below has power to grant a permanent injunction if it is ultimately decided that the state prosecution here under attack violates appellant's constitutional rights.

It is now settled beyond question in this Circuit that a federal district court has power to enjoin a state prosecution which constitutes an unconstitutional application of state law where such prosecution threatens irreparable injury to fundamental constitutional rights. Aelony v. Pace, Harris v. Pace, (3 Judge Ct., M. D. Ga., Nov. 1, 1963); United States v. Wood, 295 F. 2d. 772, 778-785 (5th Cir. 1961); Bailey v. Patterson, 323 F.2d. 201 (5th Cir. 1963); City of Houston v. Dobbs Co., 232 F.2d 428 (5th Cir. 1956); Denton v. City of Carrollton, 235 F.2d 481 (5th Cir. 1956); Bush v. Orleans Parish, 194 F. Supp. 182 (E. D. La., 1961); Browder v. Gayle, 142 F. Supp. 707 (M. D. Ala., No. Div., 1956), aff'd., 352 U.S. 903 (1956); Louisiana ex rel Gremillion v. NAACP, 181 F. Supp. 37 (E.D. La., New Orleans Div., 1960), aff'd., 366 U.S. 293 (1961); Morrison v. Davis, 252 F.2d 102 (5th Cir. 1958). See also, Jordan v. Hutcheson, 323 F.2d 597 (4th Cir. 1963); Moore, Commentary on Judicial Code 408-9; A F of L v. Watson, 327 U.S. 582 (1946); Truax v. Reich, 239 U.S. 33 (1915); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Terrace v. Thompson, 263 U.S. 197 (1963); Hague v. CIO, 307 U.S. 496 (1939); Hynes v. Grimes Packing Co., 337 U.S. 86 (1949); Cline v. Frink Dairy Co., 274 U.S. 445 (1927); Hale v. Bimco Trading Co., 306 U.S. 375 (1939).

In Morrison v. Davis, 252 F.2d 102 (5th Cir. 1958), a three-judge panel of this Court consisting of then Chief Judge Hutcheson and Judges Tuttle and Jones cited Browder v. Gayle, 142 F. Supp. 707 (M.D. Ala., No. Div., 1956), aff'd, 352 U.S. 903 (1956), as controlling and held, in a Per Curiam opinion (252 F.2d at 103) :

> "That case disposes of the contention that the federal court should not grant an injunction against the application or enforcement of a state statute, the violation of which carries criminal sanctions. This is not such a case as requires the withholding of federal court action for reasons of comity, since for the protection of civil rights of the kind asserted Congress has created a separate and distinct federal cause of action. 42 U.S.C. A. § 1983. Whatever may be the rule as to other threatened prosecutions, the Supreme Court in a case presenting an identical factual issue affirmed the judgment of the trial court in the Browder case in which the same contention was advanced. To the extent that this is inconsistent with Douglas v. City of Jeannette, Pa., 319 U. S. 157, 63 S.Ct. 877, 87 L.Ed. 1324, we must consider the earlier case modified." (Emphasis supplied.)

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2. 28 U. S. C. § 2283 does not bar injunctive relief under the federal civil rights statutes in an appropriate case.

28 U. S. C. § 2283 does not apply where an injunction against state court proceedings is expressly authorized by an Act of Congress. Section 2283 states specifically that "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction . . . ." (Emphasis Supplied.)

42 U. S. C. § 1983 provides that:

> "Every person who, under color of any statute, ordinance . . . (etc.) of any State . . . subjects or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities accured by the Constitution and laws, shall be liable to the party injured in . . . (a) suit in equity, or other proceeding for redress." (Emphasis Supplied.)

Thus 42 U. S. C. § 1983 specifically authorizes equitable relief of the kind sought in this action. It authorizes relief against state officials in the clearest possible language, for who but a state official could possibly deprive a citizen of his constitutional rights "under color of" a state statute or ordinance? Aelony v. Pace, Harris v. Pace, supra; Morrison v. Davis, supra; Browder v. Gayle, supra; United States v. Wood, supra; McNeese v. Board of Education, 373 U.S. 668, 671-674 (1963). See also, dissenting opinion of Judge Wisdom in Dombrowski v. Pfister, 227 F.Supp. 556, 569, 571-572, 579 (3 Judge Ct., E.D. La., 1964), probable jurisdiction noted 6/15/64, 84 S.Ct. 1881.

The circumstances of this case also require issuance of a temporary injunction by the court below "in aid of its jurisdiction" under section 1983, for if such relief is not granted, jurisdiction of the court below over the permanent injunction aspect of this case will be forever lost.

3. Where a substantial claim for equitable relief staying a state prosecution is stated under the federal civil rights statutes, the district court must grant an interlocutory order if such is necessary to prevent irreparable injury and the mooting of plaintiff's claim.

Such is the rule implicit in this Court's decision in United States v. Wood, 295 F.2d 772 (5th Cir. 1961). Indeed, there is a stronger argument for the granting of interlocutory relief in this case than there was in United States v. Wood, for two reasons:

(1) there the prosecution under attack was merely a misdemeanor proceeding before a Justice of the Peace, whereas here plaintiff is threatened with a felony prosecution which may result in ten years' imprisonment, and

(2) in the Wood case, plaintiff did not contend that the state prosecution threatened to violate the constitutional rights of the defendant in the state prosecution, whereas here plaintiff alleges a violation of her constitutional rights, a violation of the constitutional rights of other civil rights workers in Mississippi, and a violation of the civil rights of Negroes in Mississippi generally.

In its opinion, court below accepted the argument of counsel for appellees that Wood stands for the proposition "that Section 2283 is inapplicable to a suit brought by the United States" and for that proposition only. We contend that Wood stands for that proposition and a good deal more.

To be sure, the Wood case did involve an action brought by the United States. And, since there is a well-established exception to section 2283 where actions by the United States are concerned, this Court applied that exception, citing, inter alia, Leiter Minerals, Inc. v. United States, 352 U.S. 220 (1957). But that is not all there was to the Wood case. If it was that simple, Judge Rives wrote a good many unnecessary paragraphs in his opinion.

Approximately one and one-half pages of the opinion in Wood (295 F.2d 778-779) are devoted to the inapplicability of section 2283 to the case because of

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the Leiter Minerals doctrine. From the end of page 779 to the middle of page 785 (a total of five and one-half pages), Judge Rives addresses himself to issues of broader application.

One point he makes is that when a federal court sits in exercise of the jurisdiction created by a civil rights statute (there 42 U.S.C. § 1971), it sits "under a mandatory jurisdictional statute" and not as an ordinary court of equity. And because it sits in exercise of an express statutory mandate, the court is under a positive duty to carry out the policy and purpose of the operative statute; it "is not operating under common-law equitable doctrines," but under instructions from Congress.

Another point is that the legislative history of the civil rights statute there invoked "would indicate that Congress contemplated just such activity as is here alleged - - - where the state criminal processes are used as instruments for the deprivation of constitutional rights." 295 F.2d at 781. The statute involved in Wood (42 U.S.C. § 1971) was amended in 1957, and for that reason speaks with somewhat greater specificity than the statutes invoked in this action. (42 U.S.C. § 1983 was enacted in 1871.) But the fact remains that section 1983 is just as much a civil rights statute as section 1971, and a civil rights statute means practically nothing if it is interpreted as applicable only to private citizens and policemen and never to state judicial and quasi-judicial officials as appellees have contended. See, Morrison v. Davis, 252 F.2d 102, 103 (5th Cir. 1958).

The federal civil rights statutes are specifically designed to afford protection to fundamental constitutional rights when the persons charged with violating them are state officials. A state sheriff, district attorney, or judge has no more right or license to violate constitutional rights than anyone else. As soon as a state official crosses the boundaries of individual constitutional rights, he has exceeded his authority and may be judged accordingly by a court of appropriate jurisdiction.

A third point made by Judge Rives is that under Section 1971 "the affirmative defense of adequate state remedies has been specifically removed by statute." 295 F.2d 784. We submit that the defense has been specifically removed as well by section 1983 and by 28 U. S. C. § 1343 and 42 U. S. C. § 1985, for these statutes share with section 1971 the purpose of affording immediate relief against violations of constitutional rights where they are being violated by state officials. If it is unconstitutionally applied state remedies that are violating the plaintiff's rights, it makes a mockery of the Constitution to require the victim to allow his persecutors to run those misused remedies to the very end before being told by a duly authorized court to desist. See, McNeese v. Board of Education, 373 U.S. 668, 671-674 (1963); Watson v. Memphis, 373 U.S. 526, 532-33 (1963).

We have pointed out above that the Leiter Minerals exception to section 2283 is not needed in this case because this case involves both express statutory authorization of equitable relief and the need to preserve the jurisdiction of the court below. The significant thing about United States v. Wood for purposes of this case is what it discloses about the purposes of the civil rights statutes and the mandate to the federal courts embodied in them. In Wood this Court held that where a "valid claim" under a civil rights statute has been "stated", the statute must be read as "directing the district court to exercise its jurisdiction." (295 F.2d at 783.) The teaching of Wood should therefore be applied in this case.

II

A SUBSTANTIAL CLAIM FOR RELIEF UNDER THE FEDERAL CONSTITUTION AND CIVIL RIGHTS STATUTES HAS BEEN PRESENTED TO THE COURT BELOW IN THIS CASE

So far as applicable law is concerned, this is a very complex case. From one point of view, this is a "freedom of speech" case, for it cannot be doubted by anyone familiar with litigation that the right to testify freely in both federal and state courts without fear that honestly given but debatable statements of fact will result in prosecution and imprisonment for perjury is a part, and a very important part, of the right to freedom of speech under the First and Fourteenth Amendments. This right is important not only for individual witnesses and defendants, but also for the continued effective functioning of federal and state judicial systems.

From another point of view, this is a "due process" case, for it raises the question of what constitutes a sufficient basis of fact under the Fourteenth Amendment to justify the commencement of a perjury prosecution. Clearly the subjective "feeling" of a local judge that a witness before him has lied is not enough. Some sort of clear indication that an intentional falsehood has been told must be required if abuses of the perjury laws are to be prevented.

From a third point of view, this case raises constitutional questions with respect to the relative functions of the judge before whom testimony is given and the prosecuting attorneys in connection with the prosecution of perjury cases. Is a prosecutor bound to prosecute a perjury charge merely because the judge before whom certain testimony was given feels that it contained intentional falsehoods? or must the prosecutor exercise independent judgment as to whether a constitutionally sufficient basis for a perjury charge exists? What is the impact of the federal civil rights laws if he does not do so? Does the return of an indictment by a grand jury demonstrate conclusively and beyond judicial review that a constitutionally sufficient basis existed for the charge?

From a fourth point of view: Does Fourteenth Amendment due process require a preliminary submission of the facts underlying a potential perjury charge to a judge other than the one who heard the testimony for an independent finding of "probable cause" for the charge?

From a fifth point of view, this case raises constitutional questions with respect to what constitutes a sufficient perjury indictment.

From a sixth point of view, this case raises the question of whether or not Section 2479 of the Mississippi Code of 1942 is void-for-vagueness.

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And there are other issues of substantial importance to be raised at the trial of this case.

In support of their contention that a temporary injunction should not issue in this case, appellees have pointed to the paucity of affirmative evidence produced in support of appellant's case at the hearing on April 20, 1964. The fact that the absence of such evidence is due mainly to the extremely narrow view of the issues adopted by the court below has been discussed above. But despite the lack of positive evidence at that hearing, there is nevertheless a substantial record in this case, a record of sufficient substance to present the issues just described for determination by the trial court without any new evidence of any kind being introduced.

There is the transcript of testimony at appellant's trial for disturbing the peace. There is the testimony of the appellees at the hearing below. There are the text of the indictment and the texts of Sections 2479 and 2315 of the Mississippi Code of 1942. There are the exhibits attached to the complaint. There are also the appendices attached hereto, which indicate evidence to be produced at trial.

These sources alone raise justiciable questions with respect to the existence of probable cause for the perjury charge, the sufficiency under the Due Process Clause of the language and the procedures of Section 2479, the sufficiency of the indictment, and whether or not equal protection of the laws was denied appellant.

If this court should decide that the court below has taken an unduly narrow view of the issues in this case and provide it with guidance as to what issues should be considered at trial, evidence as to those issues will be produced by counsel for appellant at trial. In connection with what the issues to be tried in this case are, this court should consider the position taken, we think erroneously, by appellees that the claims stated in the complaint sound exclusively in conspiracy and that individual claims against the different defendants are not stated. Consistent with this position, counsel for appellees has contended that since no proof of a clandestine "conspiracy" specifically to violate appellant's constitutional rights has been shown among the defendants, the complaint must fall.

Our position is that the perjury prosecution itself, conceived by Judge Moore and carried forward by Jack Travis, William Waller, and others, violates appellant's rights to due process and equal protection of the laws and is therefore an unconstitutional conspiracy.

It is a conspiracy in violation of the Constitution and civil rights statutes in somewhat the same way that a lynch mob is. No one in a lynch mob says to the other participants, "Let's get together and violate that rascal's constitutional rights by hanging him from a tree!" They simply say, "Let's hang him now without waiting for a trial!" In this case appellees have, in effect, said, "Let's try her for perjury. We have little to indicate that what she said was false and nothing to show that she knew it was false, but public feeling is strong against civil rights workers these days, and we should have little difficulty convicting her no matter how insubstantial our case may be." The lynch mob is a conspiracy because it is a group of two or more people consciously acting together to do something illegal, something the law does not allow. In the present case there is no question but that Moore, Travis, and Waller consciously acted together to do something, namely to prosecute appellant for perjury. The question is whether or not what they acted together to do was illegal, i.e., unconstitutional. If it was (and is), the court below must exercise its jurisdiction and enjoin the prosecution. If in fact their action was illegal, the fact that appellees may not have thought so is essentially irrelevant. It is no justification for a lynching that the killers did not regard hanging a Negro as illegal.

Appellant also contends that the complaint states individual claims against each of the defendants under 42 U.S.C. §§ 1983 and 1986. If it does not, it should be deemed amended to state such individual claims. (See Federal Rule 8(f).) In any case, the defect, if such it is, can be easily corrected by the service of an amended complaint by leave of court.

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III

IRREPARABLE INJURY WILL BE CAUSED APPELLANT IF A TEMPORARY INJUNCTION IS NOT ISSUED IN THIS CASE, AND APPELLEES WILL SUFFER NO SIGNIFICANT HARM IF SUCH AN INJUNCTION IS ISSUED

This Court can take judicial notice of the fact that if appellant's perjury trial is allowed to proceed before this case is decided on its merits and if this case is ultimately decided in her favor, no amount of money damages awarded after the fact will be able to undo the terrible harm that will have been done this young woman, by the conduct of a trial at which ten years of her life hang in the balance.

This Court can also take judicial notice of the fact that if it directs that an interlocutory injunction issue against the prosecution, none of the defendants will be caused even the slightest inconvenience or injury thereby. No castastrophe will befall the State of Mississippi or any of the appellees simply because they are prevented from prosecuting appellant for a few more months. Indeed, counsel for appellees agreed to a stipulation precluding such prosecution during the pendency of this appeal without objecting that the delay thus caused the prosecution would irreparably injure their clients.

Thus, when this Court "balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction" as it is bound to do in determining whether or not the temporary relief here sought should be granted (Yakus v. United States, 321 U.S. 414, 440 (1944)), it must find that the balance of threatened injuries, the requirements of justice and fairness upon which equity jurisdiction is based, and the mandate of the federal civil rights statutes, as interpreted by its decisions, require that a temporary injunction issue in this case.

The controlling principle of law was succinctly stated by the court in Airport Parking, Inc. v. New Orleans Aviation Board, 185 F. Supp. 736, 738 (E.D. La., 1960);

> "where . . . the questions presented by an application for a temporary injunction are grave and the injury to the moving parties will be certain and irreparable if the application be denied and final decree be in their favor, while if the injunction be granted, the injury to opposing parties, even if the final decree be in their favor will be inconsiderable, the temporary injunction should be granted."

Accord, Perry v. Perry, 190 F.2d 601 (D. C. Cir. 1951); Bergen Drug Company v. Parke, Davis & Company, 307 F.2d 725, 728-9 (3d Cir. 1962); Durkin v. John Hancock Mutual Life Insurance Co., 92 F. Supp. 893 (S.D.N.Y. 1950)

IV

HABEAS CORPUS CASES RELIED UPON BY THE COURT BELOW ARE INAPPLICABLE TO THE FACTS OF THE PRESENT CASE

In its opinion denying appellant's application for an interlocutory injunction (Appendix A hereto), the court below relies upon Brown v. Rayfield, 321 F.2d 96 (5th Cir. 1963), cert. denied, 375 U.S. 902 (1963), and other cases involving denial of petitions by defendants in state criminal proceedings for federal writs of habeas corpus under 28 U.S.C. § 2254. (For text, see Appendix G hereto.)

We submit that such cases are clearly inapplicable to the present action. The cases relied upon by the court below involved application of a federal statute which expressly requires a showing that state remedies have been exhausted as a precondition to the granting of federal habeas corpus on behalf of "a person in custody pursuant to the judgment of a State Court," i.e., after trial. In Brown v. Rayfield, for example, this Court simply held, quite properly, that the requisite showing of exhaustion of state remedies had not been made by the appellants.

The federal statutes relied upon in the present case are quite different. None of them contains an express requirement of exhaustion of state remedies such as that contained in 28 U.S.C. § 2254.

In fact, as is explained earlier in this brief, the purpose of the statutes relied upon in this case is completely inconsistent with a requirement of exhaustion of state remedies, for their purpose is to prevent violations of constitutional rights by state officials acting under color of state law. The purpose of federal habeas corpus is to permit review of state proceedings after they have been completed, to insure that constitutional standards of fairness were complied with by the state. The purpose of the statutes here relied upon is to permit review of state actions and proceedings while they are in progress, to insure that their continuance will not violate constitutional rights.

The complete irrelevance of cases under 28 U.S.C. § 2254 to the present circumstances is indicated by the fact that counsel for respondents did not even argue their application to the court below, but chose rather to rely primarily upon 28 U.S.C. § 2283, which has at least an appearance of relevance to the present facts.

Respondents' argument based upon section 2283 is, unfortunately for them, somewhat weakened by the opinion of the court below, which indicates that Judge Mize has less than complete confidence in that statute as a defense against application of the statutes cited and relied upon by appellant in this case. While Judge Mize relies primarily upon section 2283, he attempts to back up his conclusion based upon that section by falling back upon the trial court's inherent equity powers and upon the cases under section 2254. We have pointed out earlier in this brief that United States v. Wood, 295 F.2d 772 (5th Cir. 1961), established in this Circuit that a federal court sitting in exercise of its jurisdiction under the civil rights statutes sits to exercise a congressional mandate and not as an ordinary court of equity. And section 2254 is, as we have said, quite different in its language and purpose from the civil rights statutes relied upon in this case.

CONCLUSION

In light of the foregoing, we respectfully submit that this Court

(1) reverse the decision below and direct that an order be issued forbidding the prosecution of appellant until the merits of this case are ultimately decided,

(2) find that the court below misconceived the issues before it in this case when it limited proof strictly and exclusively to the existence of an overt conspiracy avowedly to violate appellant's constitutional rights,

(3) provide the court below with guidance as to what some of the issues in this case will (or may) be by listing some of them,

(4) find specifically that the court below erred when it refused to allow counsel for appellant to cross-examine appellees with respect to their views of and personal commitments to officially maintained racial segregation,

(5) find specifically that evidence should be admitted at trial in this case to show the intimidating effects prosecution of this case will have (a) upon civil rights workers, (b) upon potential witnesses in cases involving civil rights activity as a known factor, and (c) upon Negroes generally in Mississippi,

(6) find specifically either (a) that the complaint does not sound exclusively in conspiracy, but states individual claims against each of the defendants or (b) that permission should be granted to amend the complaint to state such claims,

(7) find specifically that the complaint herein states a proper class action under Federal Rule 23 on behalf of all civil rights and voter registration workers in the State of Mississippi against the defendants for harassment consciously engaged in in excess of their official powers, and

(8) find specifically that paragraph 21 of the complaint herein properly presents for determination at trial the question of whether or not there was when prose-

cution of appellant began and still is in Mississippi a conspiracy involving some or all of the defendants "to deprive plaintiff, other workers for voter registration and civil rights generally in . . . Mississippi, and all of them as a class of their rights to freedom of speech, of assembly, of association, and to petition for redress of grievances as guaranteed to them by the Constitution of the United States."

Respectfully submitted,

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CERTIFICATE

The undersigned of counsel certifies that a true and correct copy of the foregoing Brief was this day mailed by United States mail, postage prepaid to the Honorable Thomas H. Watkins, attorneys for defendant, at 800 Plaza Building, Jackson, Mississippi, to the Honorable Will S. Wells, attorney for defendants, at the Department of Justice, State of Mississippi, Jackson 2, Mississippi, and to the Honorable E. W. Stennett, City Attorney, Jackson, Mississippi.

This the 20th day of January, 1965.

OF COUNSEL

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APPENDIX

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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE, PLAINTIFF

VS. CIVIL ACTION NO. 3535(J)(M)

PAUL B. JOHNSON, JR. individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT, DEFENDANTS

This is an action brought by Lois Chaffee, a citizen of the State of Idaho, against Paul B. Johnson, Jr., Governor of the State of Mississippi, Joe T. Patterson, Attorney General, Leon F. Hendrick, Circuit Judge, Russell D. Moore, III, County Court Judge, William L. Waller, District Attorney, Allen Thompson, Mayor of the City of Jackson, Jack Travis, City Prosecutor, W. D. Rayfield, Chief of Police of the City of Jackson, J. L. Ray, Deputy Chief of Police, and Ross R. Barnett,

former Governor of the State of Mississippi. Plaintiff seeks to enjoin the defendants from prosecuting plaintiff under an indictment for perjury returned by a grand jury of Hinds County, Mississippi. Her complaint also demands damages from said defendants for alleged violations of her civil rights.

The complaint alleges that plaintiff is presently awaiting trial under an indictment returned by a grand jury charging her with perjury while testifying in a criminal action in the County Court of Hinds County, Mississippi, on October 15, 1963. It is alleged that the defendants entered into a conspiracy to have the plaintiff indicted and prosecuted for perjury for the purpose of intimidating and discouraging plaintiff and others from engaging in civil rights activities. The various defendants filed answers denying the material allegations of the complaint.

The evidence offered by all parties on hearing of plaintiff's motion for a temporary restraining order wholly failed to substantiate the charges made by plaintiff against the defendants. Although plaintiff was present during the hearing, she did not testify in support of the allegations of her complaint. The defendants took the stand and denied the above mentioned allegations of the complaint unequivocally. The plaintiff has, therefore, wholly failed to make a showing which would entitle her to the temporary restraining order which she seeks.

It is not for this Court to determine either the innocence or guilt of the plaintiff of the offenses for which she stands charged in the Courts of the State of Mississippi. All rights of the plaintiff, including her constitutional

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rights, will be protected by the State Courts. As an effort to enjoin the prosecution of the plaintiff for perjury in the State Court, the injunction sought herein is prohibited by 28 U.S. Code, Section 2283. H. J. Heinz Co. v. Owens, U.S.C.A.9th, 189 F.2d 505; T. Smith & Son, Inc. v. Williams, U.S.C.A.5th, 275 F.2d 397; Wilson v. Schnettler, 365 U.S. 381, 5 L.Ed.2d 620, 81 S.Ct. 632. Said Section 2283 is not suspended or modified by the Civil Rights Act. Smith v. Village of Lansing, U.S.C.A.7th, 241 F.2d 856; Goss v. State of Illinois, U.S.C.A.7th, 312 F.2d 257. The statutory prohibition is not avoided by enjoining state officials rather than the State Court itself. Sperry Rand Corporation v. Rothlein, U.S.C.A.2nd, 288 F.2d 245; Furnish v. Board of Medical Examiners of Calif., U.S.C.A.9th, 257 F.2d 520; Amalgamated Clothing Workers v. Richman Bros., 1955, 348 U.S. 511, 75 S.Ct. 452, 457, 99 L.Ed. 600; Toucey v. New York Life Ins. Co., 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100. Counsel for plaintiff rely primarily on United States v. Wood, U.S. C.A.5th, 295 F.2d 772, which holds that Section 2283 is inapplicable to a suit brought by the United States. This clearly distinguishes it from the case at hand.

If this Court had the authority to issue the injunction prayed for, it would not, as a federal Court of equity, issue such injunction in view of the facts disclosed at the hearing. Cleary v. Bolger, 371 U.S. 392, 9 L.Ed.2d 390, 83 S.Ct. 385; Wojcik v. Palmer, U.S.C.A.7th, 318 F.2d 171; Douglas v. Jeannette, 319 U.S. 157, 87 L.Ed. 1324; Watchtower Bible & Tract Soc. v. City of Bristol, 24 F.Supp.

57, affirmed 305 U.S. 572, 83 L.Ed. 361. An injunction staying State criminal proceedings is an extraordinary remedy which will not be indulged in by a Federal Court of equity except in a case clearly demanding it. Bailey v. Patterson, 366 U.S. 346, 7 L.Ed.2d 332, 82 S.Ct. 282; Warner Bros. Pictures v. Gittone, U.S.C.A.3rd, 110 F.2d 292; Murray Hill Restaurant v. Thirteen Twenty One Locust, U.S.C.A.3rd, 98 F.2d 578; American Mercury v. Kiely, U.S.C.A.2d, 19 F.2d 295; 1 Joyce on Injunctions, Sec. 109A; 1 High on Injunctions, Sec. 10; South Carolina Power Co. v. South Carolina Commission, 286 U.S. 525, 52 S.Ct. 494, 76 L.Ed. 1268; United States v. Corrick, 293 U.S. 435, 56 S.Ct. 829, 80 L.Ed. 1263; Meccano v. Wanamaker, 253 U.S. 136, 40 S.Ct. 463, 64 L.Ed. 822; Westinghouse Electric Corp. v. Free Sewing Mach. Co., U.S.C.A.7th, 256 F.2d 806; Meiselman v. Paramount Film Distributing Corp., U.S.C.A.4th, 180 F.2d 94.

The complaint alleges, and counsel for plaintiff contend that plaintiff will not receive a fair trial in the Courts of the State of Mississippi. There is no factual basis for any such contention, and there is a strong legal presumption to the contrary. Harrison v. N.A.A.C.P., 360 U.S. 167, 3 L.Ed.2d 1152; Hawk v. Jones, U.S.C.A.8th, 160 F.2d 807; N.A.A.C.P. v. Bennett, D.C. Ark., 178 F.Supp. 191; Browder v. City of Montgomery, D.C. Ala., 146 F.Supp. 127.

Realizing that their proof did not support the allegations of the complaint against the defendants, counsel for plaintiff, at the hearing, took the position that an injunction should issue to protect the class which plaintiff purported to represent. The complaint described the alleged

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class as all persons who are workers for the end of discrimination and segregation in Mississippi, for the encouragement of the exercise by Negroes in Mississippi of their right to vote and to register to vote, and for the exercise and preservation of civil rights generally in Mississippi. Clearly this is not a proper class action. The vague and indefinite description of the purported class depends upon the state of mind of a particular individual, rendering it difficult, if not impossible, to determine whether any given individual is within or without the alleged class. The members of a class must be capable of definite identification as being either in or out of it. Giordano, et al v. Radio Corp. of America, et al, U.S.C.A.3rd, 183 F.2d 558; Mitchell v. Wright, et al, D.C.Ala., 62 F.Supp. 580; Reddix v. Luckey, U.S.C.A.5th, 252 F.2d 930. Plaintiff cannot make this a class action by merely calling it such. Whether this is a proper class action involves a question of fact with the burden of proof on the plaintiff. This burden has not been met in this case. Clark v. Thompson, D.C. Miss., 206 F.Supp. 539, affirmed 313 F.2d 637, cert. den. 11 L.Ed.2d 312.

The Writ of Injunction and Writ of Habeas Corpus are extraordinary writs and neither should be granted unless the facts require it. It is a general rule that a Writ of Habeas Corpus will not be granted, nor a Writ of Injunction enjoining the prosecution by the State in the State Courts of a criminal action pending therein. A recent case from this circuit is that of Lucien Richards and James Brown v.Rayfield, Chief of Police, 320 F.2d 96, cert denied 11 L.Ed.2d 143. In this case emphasis is placed upon the case of In Re Wyckoff, and

the doctrine of the Wyckoff case was reaffirmed by Judge Tuttle in the Richards and Brown case. The opinion of the Court of Appeals in the Wyckoff case is not reported by West Publishing Company, but is reported in 6 Race Relations Law Reporter 793, and a lengthy opinion reviewing many of the authorities was written by the District Judge which is reported in 196 F.Supp. 515. The Court of Appeals affirmed the District Court in the Wyckoff case, and application was then made to Mr. Justice Black and Mr. Justice Clark of the Supreme Court, and they, acting for the Supreme Court, denied the writ on the theory that the applicant had not exhausted state remedies. Judge Tuttle wrote a strong opinion indicating that before an applicant would be entitled to a writ he must show that he has exhausted all available state remedies even to the extent of applying to the State Court for a Writ of Habeas Corpus before coming into Federal Court. This rule of law is equally applicable to a petition seeking to enjoin a State authority from prosecuting a criminal case.

Plaintiff's motion for a temporary restraining order is denied.

SO ORDERED, this 18th day of May, 1964.

S. C. Mize

UNITED STATES DISTRICT JUDGE

18 March 64

To whom it my concern: The following is an account of what I witnessed on Rose St. just before my arrest and what happened to me immediately after, on 13 June 63.

As the group of some 80 demonstrators left the church on Pearl St., I followed them as did other people in the neighborhood. When the group got to Rose St. the street was blocked off by police. One of the policemen warned the group that if they did not have a license to parade and if they did not disband immediately, they would be arrested. The group which was in a row of couples did not disband, whereupon the police began to grab the American flags out of their hands and hustle them into police wagons. The demonstrators were encouraged to move pormptly by having billy clubs jabbed in their ribs or being struck on the backside with them.

While this was going on, many people in the neighborhood began to gather on their porches and on the sidewalks. The police threatened the people several times with arrest if they did not get off their own porches and out of their own yards. I was standing in the midst of a crowd when all of a sudden the police started to run at the crowd swinging their clubs before them. I did not run myself because I felt that it would be a foolish thing to do at the time. I also did not realise that I might also get hit. The crowd tried to run between the houses to escape the swinging clubs of the police. I saw a little girl of about ten years old trip, and before she could get up a policeman hit her very hard on the backside. I say very hard because it sounded like a solid hit.

I also saw a man get up from the ground with a bloody head. I later found out that his name is John Saulter. At about this time, I saw several

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policemen run up the porch steps of the house in front of which Saulter was surrounded. The police were chasing some of the people who had fled into the house for protection. I then remember seeing Reverend King and a young woman(I later found out that her name is Lois Chaffee) standing on the fron t porch yelling that a person in the house was in need of an ambulance and would the police get one. Miss Chaffee was then dragged away and arrested.

Most of the people who were not in the demonstration avoided arrest by running. They also ran to get away from the swinging clubs.

When I was arrested(because I did not run as everyone else did) I was thrown into the back seat of a police car so hard that I landed on the lap of a policeman sitting on the opposite side. I was first taken to the detention center located on the fair grounds just outside of town. I was then taken from the detention center to the city jail. As I was being led from the gate of the detention center to the car, one of the policemen said to the other, " I hope this guy makes a run for it." Needless to say, I was extremely cooperative. As I was being driven from the detention center to the jail one policeman suggested to the other that they take me " down to the river for awhile." The other policeman said that they had better take me directly to the jail as they had been ordered. As I was going up in the elevator with the two policemen, one of them stopped the elevator between floors while the other slapped me about a dozen times.

While I was being "booked," one of the policemen hit the palm of one hand with his billy club and asked me if I had ever been hit by one. When I answerdd that I hadn't, he assured me that it would not be pleasant. I could not but agree after which I was led to a cell.

Melvin Schnapper
Melvin Schnapper

DISTRICT OF COLUMBIA: SS
CITY OF WASHINGTON

SUBSCRIBED AND SWORN TO BEFORE ME
THIS 11 DAY OF March 1964

HERBERT L. HUNT
NOTARY PUBLIC, D. C.
COMMISSION EXPIRES
MARCH 31, 1968

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March 16, 1964

On Thursday, June 13, I, along with several others, was standing on the sidewalk in front of   Rose Street. We were watching a civil rights demonstration of about seventy people march down Rose street. Five or six cars of police arrived to arrest the demonstrators. A crowd had gathered on the street and on the porches of surrounding houses to watch the March. The by standers shouted encouragment to the demonstrators as they marched.

The demonstration group was quiet, but never-the-less the police were rough in their handling of them as they jerked flags from their hands and shoved them into the paddy wagons.

The police began moving down the street, pushing back poeple who were watching. Many of those watching began singing. The police kept pushing people back into the yards, off of the sidewalk. When Captain Ray used the bullhorn to try to get people to leave, there were calls from the porch that this was private property (by this time most of the people had been pushed into the yards of the homes lining the street). Captain Ray thn gave the order to arrest. Several policemen ran towar the porch, into the crowd, swinging their night sticks and shouting. The police were using their night sticks on everyone they saw. My husband and I moved into the house from the porch to avoid the police. The son of the lady who owned the house tried to tell the policemen coming up on the porch that they could not invade private property. He was shoved off the porch and taken to jail. His sister started after him and was grabbed by a policeman who used a night stick around her throat and head. She was brought into the house and put on a bed. Both my husband and Miss Chaffee called to the police that there was an injured girl in the house and asked for a doctor. Both were charged with using abusive language.

I did not observe one instance of attempted resistance on the part of those watching the demonstration or threats made to the police, yet their immediate response was to physically attack in the most vicious kind of way.

Mrs. Jeannette King

STATE OF Mississippi

COUNTY OF Hinds

This day personally appeared before me, the undersigned authority in and for the state and county aforesaid, the within named JEANNETTE KING who acknowledged to me that he signed and delivered the above and foregoing statement on the day and year therein mentioned as his act and deed and for the purposes therein stated.

GIVEN UNDER MY HAND and official seal, this the 18th day of March, 1964

NOTARY PUBLIC

My commission expires:

My Commission Expires March 31, 1965

MAR 26 1964

State of New York) ss
County of New York)

Roger William Sharp being duly sworn deposes and says:

I reside at 310 West 73 Street, New York City, and was employed by the American Broadcasting Company at the time of the events herein.

On June 13, 1963, I was on assignment in Jackson, Mississippi for the News Department of the American Broadcasting Company.

At about noon on that day, I witnessed a demonstration by students protesting the killing the day before of NAACP's Medgar Evers. A sizeable crowd of mostly students attended a rally inside a church for more than an hour before being let out of the church to take part in a silent protest march. Several of the demonstrators carried American flags. They walked approximately a block and a half from the church before they were stopped by a squad of Jackson City police. On a portable loud speaker Deputy Police Chief J. L. Ray told the demonstrators to stop and he informed them that they were violating a City ordinance and were to be placed under arrest. Police began taking the flags and signs. A crowd of bystanders gathered and several of those who had taken part in the demonstration began filtering

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off into the crowd of spectators.

At the intersection where the march was stopped several well known local civil rights leaders who were recognized by both police and reporters were standing on the porch of a house. Several of the policemen ran to the porch brandishing their night-sticks and waving them threateningly. Deputy Chief Ray told the spectators to disperse, and told the people to go back inside their homes.

The officers who ran to the one porch grabbed a white man named John Slater, who had taken part in earlier demonstrations in Jackson. Although it did not appear that he was taking part in this particular march, I heard a policeman say, "There he is. He's the one we want." Slater, obviously believing that he was being arrested unjustly, appeared somewhat reluctant and beligerent. The officers who grabbed him struck him on the head with their clubs several times and he fell to the ground a few feet in front of the porch. The officers continued striking him and finally lifted him to his feet. He was not unconscious, although the blows had cut him deeply enough so that blood was streaming down his face.

This incident incensed the crowd and as Slater was led away insults were shouted at the police.

The crowd was also upset because it was claimed that an officer entered the house while Slater was being arrested and brought out a young Negro who allegedly had taken part in the march and had run into the house. My attention was directed to the Slater incident, and I did not see the officer actually enter the house. It was also charged in the crowd that

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that while Slater was on the ground he was kicked by policemen. I cannot say that I honestly witnessed this act. Taken in total, these events lasted only a few moments, and police quickly cleared the area.

The attitude of police on that day was quite similar to that shown in numerous other such incidents I had witnessed in previous weeks. During the course of numerous arrests in Jackson I witnessed police striking Negro demonstrators. On one occasion, I saw a Negro boy struck on the head by a rifle butt for not moving faster as he obeyed orders to clear the street.

I should also point out that on the day in question, and on other occasions, I was threatened by a raised night stick in the hand of a Jackson City policeman.

3/19/64

Sworn to before
me this 19th day
of March, 1964

Edward V. Dennehy
EDWARD V. DENNEHY
Notary Public, State of New York
No. 03-5987100
Qualified in Bronx County
Certificate filed in New York County
Commission Expires March 30, 1964

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INDICTMENT

THE STATE OF MISSISSIPPI,
First District, Hinds County.

CIRCUIT COURT
November Term, A. D., 1963
FIRST JUDICIAL DISTRICT
OF HINDS COUNTY.

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of the First Judicial District of Hinds County, in the State of Mississippi, elected, impaneled, sworn, and charged to inquire in and for said District, County and State aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That

Lois C. Chaffee

in said District, County and State on the 15th day of October, A. D., 1963 then and there having been sworn and being under oath as a witness in a trial upon an affidavit charging a misdemeanor in Hinds County Court, First Judicial District, Hinds County, Miss., Cause Number 13791, did wilfully, falsely and corruptly swear and testify as follows, to-wit: "The children would hold onto the flags and they were lined up, and they had two police going down, getting on either side one at a time, and the police would grab their flags and they had their sticks ready and if the children would hold onto their flags, they crack their sticks - in effect, everybody who was holding on to their flag was getting their head cracked and being clubbed down, and - - ", and further at said time and in the manner and form aforesaid the said Lois C. Chaffee did wilfully, falsely and corruptly swear and testify, "So, the policemen would grab the flags and pull at it, and if there was any resistance, just with the other hand he'd knock them over the head and knock them on the ground. I mean, these billy clubs inflict a bad blow," and further at said time and in the manner and form aforesaid she did wilfully, falsely and corruptly swear and testify, "I would say I saw three or four incidents where I was sure they were hit by the police, but I only saw one child fall with blood gushing and all, you know, right in front of me. I saw lots of bloody heads, ---", all of which said testimony and false swearing the said Lois C. Chaffee well knew to be false, and fraudulent, and said testimony being material to the issues of said trial, all of which

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

John H Fox III
District Attorney

APPENDIX "E"

Mississippi Code 1942, Recompiled

§ 2315. Perjury--wilful and corrupt false swearing.

Every person who shall wilfully and corruptly swear, testify, or affirm falsely to any material matter under any oath, affirmation, or declaration legally administered in any matter, cause, or proceeding pending in any court of law or equity, or before any officer thereof, or in any case where an oath or affirmation is required by law or is necessary for the prosecution or defense of any private right or for the ends of public justice, or in any matter or proceeding before any tribunal or officer created by the Constitution or by law, or where any oath may be lawfully required by any judicial, executive, or administrative officer, shall be guilty of perjury, and shall not thereafter be received as a witness to be sworn in any matter or cause whatever, until the judgment against him be reversed.

APPENDIX "F"

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§ 2254. State custody; remedies in State courts.

An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented.

APPENDIX "G"

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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21638

LOIS CHAFFEE,
Appellant,

versus

PAUL B. JOHNSON, JR., ETC., ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(November 12, 1965.)

Before MARIS,* RIVES and BELL, Circuit Judges.

PER CURIAM: This is an appeal by the plaintiff from the denial by the district court of her motion for an interlocutory injunction pending the hearing and determination of her complaint charging the defendants with a conspiracy to prosecute her in the State courts for an alleged felony, of which she asserts she is not guilty, for the purpose of discouraging her and others from engaging in civil rights activities.

---

* Of the Third Circuit, sitting by designation.

We agree with the district court that the evidence offered at the hearing on plaintiff's motion for a preliminary injunction failed to substantiate her charges against the defendants and that she wholly failed to make a showing at that hearing which would entitle her to the interlocutory injunction which she sought. Since the order appealed from must be affirmed on this ground we do not reach the other issues which the appellant seeks to raise in this court.

AFFIRMED.

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O., La.

IN THE SUPREME COURT OF THE UNITED STATES

LOIS CHAFFEE,

Petitioner, :

-against-

PAUL B. JOHNSON, JR., individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT, :

Respondents.

No.
October Term, 1965

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Respectfully submitted,

PAUL O'DWYER
Attorney for Petitioner
50 Broad Street
New York, New York

Carl Rachlin,
Of Counsel
38 Park Row
New York, N. Y.

INDEX

OPINIONS BELOW 1

JURISDICTION 1

QUESTIONS PRESENTED 1

STATUTES INVOLVED 2

PROCEEDINGS BELOW 2

STATEMENT 4

REASONS FOR GRANTING THE WRIT:

1. The decision of the court below is in direct conflict with the principles enunciated by this Court in Dombrowski v. Pfister 9

2. This case presents an important question not decided in Dombrowski and as to which there is a conflict among the circuit courts: Does 42 U.S.C. § 1983 constitute a statutory exception to 28 U.S.C. § 2283? 14

3. Because the hearing in the district court was held prior to the Dombrowski decision and therefore without benefit of principles set forth in that case to guide counsel and court in the preparation and consideration of evidence, it was error for the court below to affirm the district court decision without remanding the case for a new hearing in light of Dombrowski 16

CONCLUSION 18

AFFIDAVIT OF SERVICE 19

APPENDIX A - Statutes . . . . 3 pp.

B - Opinion Of The Court of Appeals . . . . 2 pp.

C - Opinion Of The District Court . . . . 6 pp.

D - Indictment . . . . 1 p.

CITATION

TABLE OF CASES:

Baines v. City of Danville, 337 F.2d 579 (4th Cir. 1964) 14

Cameron v. Johnson, 381 U.S. 741 (1965) 14

City of Chester v. Anderson, 347 F.2d 823 (3d Cir. 1965) 14

Cooper v. Hutchinson, 184 F.2d 119 (3d Cir. 1950) 14

Cox v. Louisiana, 348 F.2d 750, 754-55 (5th Cir. 1965) 14

Dilworth v. Riner, 343 F.2d 226 (5th Cir. 1965) 14

Dombrowski v. Pfister, 380 U.S. 479 (1965) 1,2,3,9,10,11,13,14,16,17

Goss v. Illinois, 312 F.2d 257 (7th Cir. 1963) 14

Hillegas v. Sams, 349 F.2d 859 (5th Cir. 1965) 14

N.A.A.C.P. v. Button, 371 U.S. 415, 428 (1963) 11

Peacock v. City of Greenwood, 347 F.2d 679 (5th Cir. 1965) 14

Pierre v. Louisiana, 356 U.S. 584 (1958) 11

Rachel v. Georgia, 342 F.2d 336 (5th Cir. 1965) 14

Russell v. United States, 369 U.S. 749 (1962) 3,12

Shuttlesworth v. Birmingham, U.S. 15 L. Ed. 2d 176 (1965) 11

Smith v. Village of Lansing, 241 F.2d 856 (7th Cir. 1957) 14

United States v. Wood, 295 F.2d 772 (5th Cir. 1961), *cert. denied*, 369 U.S. 850 (1963) 14

White v. Crook, F. Supp. (M.D. Ala. 1966) 14

OTHER AUTHORITIES:

Constitution of the United States

First Amendment 3,10,11
Fifth Amendment 3,11
Sixth Amendment 3,10,11
Fourteenth Amendment 3,11

Federal Statutes

28 U.S.C. § 1254 1
28 U.S.C. § 2283 1,4,14,15

42 U.S.C. § 1983 1,3,13,14,15

42 U.S.C. § 1985 4
42 U.S.C. § 1986 4

Mississippi Code of 1942

Section 1962 1,8,11
Section 2315 1,8,13
Section 2479 1,7,12

Petitioner, Lois Chaffee, seeks review of a decision of the United States Court of Appeals for the Fifth Circuit, in which judgment was entered on November 12, 1965.

CITATIONS TO OPINIONS BELOW

The opinion of the district court below (R. 162) is unreported and attached hereto as Appendix C. The opinion of the Court of Appeals (R. 324), also unreported, is attached hereto as Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered on November 12, 1965. By order of Mr. Justice Fortas, dated February 11, 1966, the time for filing this petition was extended to and including March 12, 1966. The jurisdiction of this Court rests upon 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

(1) Since the state perjury prosecution herein has no reasonable probability of success and will, if allowed to proceed, make potential witnesses unwilling to testify in cases involving civil rights workers and impair rights of speech and association protected by the First Amendment, do not the principles enunciated by this Court in Dombrowski v. Pfister, 380 U.S. 479 (1965), require reversal of the decision below and the issuance of an order

forbidding prosecution under the present indictment?

(2) Even if a "proceeding in a state court" had been commenced for purposes of 28 U.S.C. § 2283 when the present action was begun, is not 42 U.S.C. § 1983 (Rev. Stat. § 1979) a statutory exception to the rule of § 2283?

(3) Since the district court hearing below was conducted prior to this Court's decision in Dombrowski, petitioner's counsel was without the guidance of Dombrowski in preparing evidence for that hearing, and the district court did not have the benefit of that case in ruling upon the admissibility of evidence, was it not error for the court of appeals below to affirm the denial of a temporary injunction without remanding the case for a new hearing in light of Dombrowski?

STATUTES INVOLVED

The statutory provisions involved are: 42 U.S.C. § 1983 (Rev. Stat. § 1979, 1875); 28 U.S.C. § 2283; Mississippi Code of 1942, Recompiled §§ 1762, 2315 and 2479. They are attached hereto as Appendix A.

PROCEEDINGS BELOW

Petitioner commenced the present action in the United States District Court for the Southern District of Mississippi, seeking permanent and temporary injunctive relief against threatened violations by the respondents of her rights under 42 U.S.C. § 1983 and other civil rights statutes, and under the First, Fifth, Sixth and Fourteenth Amendments to the Federal Constitution. The complaint (R. 9) alleges that the state perjury prosecution was intended to have and has had the effect of intimidating civil rights workers and discouraging them from testifying in civil rights cases for fear of unfounded perjury prosecutions.[1] Petitioner also alleged below that the prosecution was initiated without any hope of success because of (1) the improper role of a state trial judge in commencing the prosecution, (2) the invalidity of the indictment on its face as contrary to the principles of Russell v. United States, 369 U.S. 749 (1962), and (3) the virtual certainty that any prosecution would be ultimately reversed because of the unconstitutional exclusion of women from service upon the grand jury.

During the district court hearing below, which took place prior to this Court's decision in Dombrowski v. Pfister, 380 U.S. 479 (1965), petitioner was not permitted to establish the effect of the prosecution on civil rights activities in Mississippi, or on the access of civil rights litigants to witnesses. (R. 189-319) Evidence was strictly limited to the question of whether respondents did or did not conspire to violate petitioner's constitutional rights. After the hearing, the district court denied pet-

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[1] As the result of this prosecution, petitioner was forced to leave Mississippi and is now teaching in New York.

itioner's motion for a temporary injunction upon the grounds that injunctive relief against a state prosecution was forbidden by 28 U.S.C. § 2283; that such relief could not be granted because petitioner had not exhausted her state court remedies; and that petitioner failed to prove a conspiracy among respondents to violate her civil rights (R. 162-167).

The Court of Appeals for the Fifth Circuit affirmed upon the sole ground that petitioner had failed to produce at the district court hearing sufficient evidence of a conspiracy among the respondents to justify issuance of a temporary injunction against the state prosecution (R. 324).[1] The Court of Appeals expressly declined to rule on any of the other legal and factual questions involved in the appeal, and made no reference in its opinion to petitioner's arguments based upon Dombrowski.

STATEMENT

Petitioner, Lois Chaffee, is a twenty-five year old school teacher from Kellogg, Idaho. She went to Mississippi in the fall of 1962 to teach English at Tougaloo College, a predominantly Negro institution near Jackson, and stayed on during the summer of 1963 as a volunteer civil rights worker.

---

[1] The court appears to have overlooked the fact that petitioner has based her claim upon 42 U.S.C. § 1983, which requires no proof of conspiracy, and to have dealt only with her claims under 42 U.S.C. §§ 1985 and 1986, which do require proof of conspiracy.

The summer of 1963 was one of intense and massive civil rights activities in the State of Mississippi. Riots had occurred at the University of Mississippi in the fall of 1962 when James Meredith was refused admission, and tension had mounted steadily as the state braced itself for another long and bitter summer of conflict arising out of Negro demands for desegregation of public facilities, the right to vote, and other "civil rights." There were many demonstrations that summer, some of them covered by nationwide television broadcasts. Many white citizens of Mississippi were deeply angered by the activities of civil rights workers in Mississippi. There was particular animosity for civil rights workers from the North ---so-called "outside agitators." It was in this highly charged atmosphere of public tension that the facts of this case took place.

Around midnight on the night of June 11, 1963, Medgar Evers was shot in the back and killed in Jackson, apparently, as a consequence of his outspoken leadership of the NAACP in Mississippi. A wave of massive, non-violent demonstrations took place, and, by the evening of June 12, the resulting arrests had filled the jails of Jackson to overflowing. The entire nation was aroused by the coverage of these demonstrations on television broadcasts and in headlines across the country. (R. 37-61)

On June 13, 1963, petitioner was present in a crowd, primarily Negro, which had gathered at the corner of Rose and Deer Park streets to witness the arrest of Negro children engaged in a silent march to protest the murder of Evers. The police charged into the crowd of onlookers and struck a number of people with their billyclubs, among them a Negro child. The beating of John Salter, a member of the crowd, by four policemen wielding billyclubs was recorded in photographs which made national headlines and which are attached to the complaint herein. (R. 37-61) Mass confusion and panic resulted from the police charge upon the crowd, as bystanders attempted to flee. During this confusion, petitioner approached Deputy Chief J. L. Ray of the Jackson Police Force to request medical attention for the beaten Negro child and was arrested.

Petitioner was charged with disorderly conduct and tried before Judge Russell D. Moore, III (a respondent before this Court), who took a great interest in petitioner's role in the civil rights movement as brought out at the trial. Judge Moore is a man of unusually strong segregationist views. For purposes of evaluating petitioner's truthfulness, Judge Moore appears to have attached great significance to the fact that he had read earlier in local newspapers of her being involved in civil rights demonstrations in Plaquemines, Louisiana. (R. 291, 295, 297, 300 - 303) Petitioner is prepared to establish, though she was not allowed to do so below, that Judge Moore was one of the organizers and supporters of a well-known "go to jail" petition, which was circulated among Mississippi officials at the time in 1962 when James Meredith had obtained a court order enabling him to enter the University of Mississippi. Moore and the other backers of the petition pledged themselves to go to jail rather than obey federal court desegregation orders. These men were, and presumably still are, deeply and very personally committed to the maintenance of racial segregation as an enforced social system in Mississippi.

At her trial for disorderly conduct, petitioner and other witnesses testified that she had been standing near the curb of the street when the marching children were arrested and that she was not shouting with the attendant crowd as charged by the arresting officers. She also testified, quite irrelevantly, that she had seen the arresting policemen strike the marching children with their billyclubs when they refused to release the American flags they were carrying. Notwithstanding this and other favorable testimony, the jury found petitioner guilty of disorderly conduct. Petitioner does not now seek review of that conviction.

After the verdict was rendered, Judge Moore invoked his authority under section 2479 of the Mississippi Code (App. A) to initiate a prosecution for perjury, and fixed bail at $2,000. No hearing was held, and no notice was given. Neither is required by the statute. Judge Moore initiated the perjury charge and found probable cause to require bail, both at the same time, thus acting as both prosecutor and judge. He based his order on petitioner's statement that the policemen had beaten the marching children (App.D). According to local newspaper accounts, Judge Moore later testied (R.291, 295, 297, 300-303), the policemen had merely beaten bystanders. He ordered a transcript of petitioner's testimony delivered to the District Attorney for presentation to the grand jury, and continually

and vigorously pressed the District Attorney's Office to present the case to a grand jury.

The grand jury, from which women were completely excluded pursuant to Mississippi Code § 1762 (App. A) returned an indictment against petitioner. The indictment does not specify the materiality of petitioner's alleged misstatements of fact to her trial for disturbing the peace, although Mississippi law clearly requires a material statement to support a perjury charge. (Miss. Code § 2315, App. A) In fact, it is impossible to determine the relevance of her statements from the facts of the indictment, since it provides no indication as to the nature of the trial or the issue to which the alleged misstatements related. (App. D)

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is in direct conflict with the principles enunciated by this Court in Dombrowski v. Pfister.

Failure to grant petitioner federal injunctive relief prior to a state trial and upon constitutional grounds independent of the factual issue which would be resolved at a state trial will result in irreparable injury to fundamental personal rights fully as sensitive as those vindicated in Dombrowski. First, the inconvenience, hardship, and embarrassment of defending a perjury prosecution and the publicity connected with it will operate to deter petitioner and others similarly situated from becoming identified with or continuing activities in support of equal rights for Negroes in Mississippi.[1] Second, the same factors will deter potential witnesses from testifying in federal and state courts in Mississippi on behalf of civil rights organizations and workers, for fear that a perjury prosecution may be commenced against them. Although petitioner's prosecution for perjury resulted from testimony given in her own defense, the interests at stake in this case are those of all potential witnesses and litigants in cases involving civil rights activists or civil rights organizations.

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[1] Petitioner herself has been effectively driven out of Mississippi by the prosecution. She is presently living in New York. There is little question but that the existence of this felony prosecution has had a substantial repressive effect upon civil rights activities in Mississippi.

This case involves the fundamental right of access to testimony as a necessary element of due process of law and the right to give testimony as an aspect of freedom of speech.[1] These rights are no less valuable to a democratic society and no less sensitive to abuse than the First Amendment rights involved in Dombrowski. In this case, as in Dombrowski, the fact of prosecution, quite apart from its chances of success, will act to intimidate potential witnesses and thus to discourage the exercise of freedom of expression and to weaken the machinery of justice.

The availability of witnesses, particularly in defense of criminal prosecutions, is an integral part of our constitutional structure. The Sixth Amendment provides for compulsory process for obtaining witnesses on behalf of criminal defendants. Any state action which has the necessary effect of diminishing access to testimony must be subject to careful scrutiny to see that it is well-founded and justifies the imposition of a burden upon constitutionally sensitive activities. The patently defective prosecution in this case will not withstand such scrutiny. The Sixth Amendment right of access to testimony cannot properly be secured if ill-founded prosecutions which impinge upon that right are permitted

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[1] It also involves the right to criticize the official behavior of policemen, since the testimony for which petitioner is being prosecuted consists, essentially, of an expression of outrage at the use of police billyclubs in the course of a peaceful demonstration.

to run their course through the ordinary procedures of trial and appeal, despite the existence of fatal defects which, in this case, can be established without resolving disputed issues of fact.[1]

Like the prosecution in Dombrowski, the instant prosecution has no reasonable likelihood of success. It is doomed to ultimate failure because:

(a) The indictment was returned by a grand jury from which women were systematically and completely excluded by operation of local statutory law (Mississippi Code § 1762, App. A) and is therefore invalid.[2]

(b) The prosecution is a nullity because the constitutionally protected interest in access to the courts, as expressed in the First, Fifth, and Sixth Amendments and applied to the states through the Fourteenth, precludes perjury prosecutions in the absence of a higher degree of materiality of the alleged falsehood to the trial at which it was given, of specification

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[1] The First Amendment has been held to protect the right of an organization to litigate on behalf of a cause such as the civil rights movement. N.A.A.C.P. v. Button, 371 U.S. 415 (1963). If litigation on behalf of civil rights constitutes protected expression, the right to secure testimony in support of such litigation -- and, by necessary implication, the right to testify -- must be equally protected and subject to restriction only in the case of clearly demonstrated abuse. In order to secure access to testimony, witnesses must be protected from unjustified intimidation.

[2] Since rendition of the court of appeals' decision below, it has become even more clear that this indictment is void by reason of exclusion of women from service upon the grand jury. See White v. Crook, F. Supp. (M.D. Ala. 1966).
"Principles which forbid discrimination in the selection of Petit Juries also govern the selection of grand juries." Pierre v. Louisiana, 356 U.S. 584 (1958).

in the indictment of the materiality of the alleged falsehood, and of factual probable cause to support an indictment and prosecution than are present in this case.

(c) The prosecution violates the due process clause of the Fourteenth Amendment because (1) the trial judge assumed an improper role in instigating and pressing the prosecution and (2) the statute under which the prosecution was commenced (Mississippi Code § 2479, App. A) makes the trial judge both prosecutor and judge for purposes of initiating and finding probable cause for a perjury prosecution, permits the setting of bail without notice or hearing, and appears, because of its vague language, to confer unlimited discretion on the judge's exercise of his powers.

If review is granted, the points stated above will be fully explained in petitioner's brief. It is sufficient here to point out that the indictment is clearly defective (1) because women were ineligible for service upon the grand jury which indicted petitioner and she was, therefore, not charged by a body validly representative of the local community and (2) because it violates the constitutional principles inherent in Russell v. United States, 367 U.S. 749 (1962), in that it fails to state the purpose or nature of the state trial at which petitioner testified or the respect in which petitioner's alleged misstatements were material, and thus precludes a judicial ruling on the materiality of her statements as found by the grand jury and as required by Mississippi Law (Mississippi Code § 2315, App. A).

We do not mean to suggest that every state prosecution containing a constitutionally defective indictment (or afflicted with some other fundamental infirmity prior to trial) can be enjoined by a federal court under 42 U.S.C. § 1983. But we do submit that a state prosecution must be enjoined under Section 1983 which contains at its outset patent constitutional defects unrelated to the factual substance of the prosecution and which, even if unsuccessful, is likely to have the effect of impairing the exercise of fundamental constitutional rights. Dombrowski stands as authority squarely in support of that proposition.

2. This case presents an important question not decided in Dombrowski and as to which there is a conflict among the circuit courts: Does 42 U.S.C. § 1983 constitute a statutory exception to 28 U.S.C. § 2283?

In Dombrowski, the relationship between Section 1983 and Section 2283 was not at issue because the federal complaint was filed before the state indictments were returned. (See footnote 2. 380 U.S. at 484.) The present case presents the problem squarely, since the indictment was handed down before petitioner commenced her action.

The Dombrowski opinion clearly indicated that a conflict among the circuits exists on this question to be resolved in an appropriate case. Compare Cooper v. Hutchinson, 184 F.2d 119 (3d Cir. 1950), with Smith v. Village of Lansing, 241 F.2d 856 (7th Cir. 1957), Goss v. Illinois, 312 F.2d 257 (7th Cir. 1963), and Baines v. City of Danville, 337 F.2d 579 (4th Cir. 1964). cf. United States v. Wood, 295 F.2d 772 (5th Cir. 1961), cert. denied, 369, U.S. 850 (1963); Dilworth v. Riner, 343 F.2d 226-231-32 (5th Cir. 1965); Cox v. Louisiana, 348 F.2d 750, 754-55 (5th Cir. 1965). See also City of Chester v. Anderson, 347 F.2d 823 (3d Cir. 1965); Rachel v. Georgia, 342 F.2d 336 (5th Cir. 1965); Peacock v. City of Greenwood, 347 F.2d 679 (5th Cir. 1965); Hillegas v. Sams, 349 F.2d 859 (5th Cir. 1965). And the importance of an early resolution of the conflict is indicated by the opinions in Cameron v. Johnson, 381 U.S. 741 (1965), in which the case was remanded to a three-judge district court with instructions to rule upon this question.

Repeated examples of unfounded prosecutions against civil rights activists in the South, of which Dombrowski is only one, have underscored the necessity for clarification of the extent of appropriate federal relief against violation of civil rights through abuse of the prosecutorial function. See Lusky, Racial Discrimination and the Federal Law : A Problem in Nullification, 63 Colum L. Rev. 1163 (1963); Shuttlesworth v. Birmingham, U.S. , 15 L. Ed. 2d 176 (1965); Cox v. Louisiana, 348 F. 2d 750 (5th Cir. 1965).

If review is granted, petitioner will contend that "proceedings in a state court" are not commenced for purposes of 28 U.S.C. § 2283 by the return of an indictment. Her position will be that such "proceedings" are not commenced until a trial or other courtroom proceedings are actually in progress, since the purpose of Section 2283 is to avoid federal conflict with state trial and appellate procedures, and such procedures have not commenced until trial is actually under way. See Brewer, Dombrowski v. Pfister : Federal Injunctions Against State Prosecutions in Civil Rights Cases -- A New Trend in Federal-State Judicial Relations, 34 Fordham L. Rev. 71, 93 (1965).

However, if this Court should conclude that "proceedings in a state court" were in progress when this action was begun, petitioner will argue that Section 1983 is a statutory exception to Section 2283 and that the issuance of a temporary injunction in this case by the lower court would be permissible and necessary "in aid of its jurisdiction" over the present proceedings within the meaning of Section 2283.

3. Because the hearing in the district court was held prior to the Dombrowski decision and therefore without benefit of principles set forth in that case to guide counsel and court in the preparation and consideration of evidence, it was error for the court below to affirm the district court decision without remanding the case for a new hearing in light of Dombrowski.

The failure of the Court of Appeals below to consider the significance of *Dombrowski* for purposes of this action and its failure to remand the case for further proceedings in light of *Dombrowski* constitute sufficiently significant error to justify issuance of the writ and remand of the case.

Although petitioner's primary position is that the court below should be reversed and an order directed (as in *Dombrowski*) striking down the present indictment, she asks this Court to consider, as an alternative remedy, remand of the case for a new hearing in light of the principles enunciated in *Dombrowski*.

The district court hearing below was held before *Dombrowski* was decided. Therefore counsel did not have the guidance of that case in preparing the evidence, and the district court was not guided by that case in ruling upon the admissibility of evidence. Admission of evidence at the hearing was limited strictly to the question of whether respondents did or did not conspire among themselves for the specifically avowed purpose of violating petitioner's constitutional rights. All other evidence was ruled out (R. 224, 225, 227-228). Now that Dombrowski has established the relevance and admissibility of testimony to show the "chilling effect" of a prosecution such as this upon the exercise of such First and Fourteenth Amendment rights as freedom of expression, freedom of association, and the right to a fair trial, a new hearing would no doubt be quite different from the one held below on April 20, 1964.

Since the district court could not have considered the principles of Dombrowski as they apply to the facts of this case and the circuit court simply failed to apply those principles -- perhaps because it regarded this as a "pre-Dombrowski" case -- remand for a new hearing under Dombrowski would be an appropriate remedy to set the record straight under present law.

CONCLUSION

For the reasons stated above, this petition for a writ of certiorari should be granted.

Respectfully submitted,

Paul O'Dwyer

PAUL O'DWYER
50 Broad Street
New York, New York

Carl Rachlin
Of Counsel
38 Park Row
New York, N.Y.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JUDITH KATZ, being duly sworn, deposes and says, that deponent is not a party to the action, is over the age of 18 years, and resides at 125 Cabrini Boulevard, New York, N.Y. That on the 11th day of March, 1966, deponent served the within Petition For a Writ of Certiorari To The United States Court of Appeals For the Fifth Circuit, upon the Honorable Thomas H. Watkins, attorney for defendants at 800 Plaza Building, Jackson, Mississippi, to the Honorable Will S. Wells, attorney for defendants, at the Department of Justice, State of Mississippi, Jackson 2, Mississippi, and to the Honorable W. E. Stennett, City Attorney, Jackson, Mississippi, the addresses designated by said attorneys for that purpose by depositing same enclosed in a postpaid properly addressed wrapper, in official depository under the exclusive care of the United States post office department within the State of New York.

Sworn to before me, this
11th day of March, 1966.

Judith Katz
JUDITH KATZ

IRA M. FUNDY
Notary Public, State of New York
No. 24-1348400 - Qual. in Kings Co.
Commission Expires March 30, 1967

Federal Statutes

28 U.S.C. § 2283

> "A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968."

42 U.S.C. § 1983

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R.S. § 1979."

Mississippi Code 1942, Recompiled

§ 1762. Who Are Competent Jurors.

"Every male citizen not under the age of twenty-one (21) years, who is either a qualified elector, or resident freeholder of the county for more than one year, and has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five (5) years and who is not a common gambler or habitual drunkard, is a competent juror; but no person who is or has been within twelve (12) months the overseer of a public road or road contractor shall be competent to serve as a grand juror. But the lack of any such qualifications on the part of one or more jurors shall not vitiate an indictment or verdict. However, be it further provided that no talesman or tales juror shall be qualified who has served as such tales juror or talesman in the last preceding two (2) years; and no juror shall serve on any jury who has served as such for the last preceding two (2) years; and no juror shall serve who has a case of his own pending in that court, providing there are sufficient qualified jurors in the district, and for trial at that term."

§ 2315. Perjury--wilful and corrupt false swearing.

"Every person who shall wilfully and corruptly swear, testify, or affirm falsely to any material matter under any oath, affirmation, or declaration, legally administered in any matter, clause, or proceeding pending in any court of law or equity, or before any officer thereof, or in any case where an oath or affirmation is required by law or is necessary for the prosecution or defense of any private right or for the ends of public justice, or in any matter or proceeding before any tribunal or officer created by the Constitution or by law, or where any oath may be lawfully required by any judicial, executive, or administrative officer, shall be guilty of perjury, and shall not thereafter be received as a witness to be sworn in any matter or cause whatever, until the judgment against him be reversed."

§ 2479. Palpable Perjury

"Whenever it shall appear to any court that a witness or party who had been sworn or examined in any case, matter, or proceeding pending before the court, has testified in such manner as to induce a reasonable presumption that he has wilfully and corruptly testified falsely to some material point or matter, the court may immediately commit such party or witness, by an order of process for that purpose, to prison, to take bond or recognizance with sureties for his appearing and answering to an indictment for perjury."

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 21638

LOIS CHAFFEE,
Appellant,
versus
PAUL B. JOHNSON, JR., ETC., ET AL.,
Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(November 12, 1965.)

Before MARIS,* RIVES and BELL, Circuit Judges.

PER CURIAM: This is an appeal by the plaintiff from the denial by the district court of her motion for an interlocutory injunction pending the hearing and determination of her complaint charging the defendants with a conspiracy to prosecute her in the State courts for an alleged felony, of which she asserts she is not guilty, for the purpose of discouraging her and others from engaging in civil rights activities.

---

* **Of the Third Circuit, sitting by designation.**

We agree with the district court that the evidence offered at the hearing on plaintiff's motion for a preliminary injunction failed to substantiate her charges against the defendants and that she wholly failed to make a showing at that hearing which would entitle her to the interlocutory injunction which she sought. Since the order appealed from must be affirmed on this ground we do not reach the other issues which the appellant seeks to raise in this court.

AFFIRMED.

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O., La.

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

LOIS CHAFFEE, PLAINTIFF

VS. CIVIL ACTION NO. 3535(J)(M)

PAUL B. JOHNSON, JR. individually and as Governor of the State of Mississippi, JOE T. PATTERSON, individually and as Attorney General of the State of Mississippi, LEON F. HENDRICK, individually and as Judge of the Seventh Circuit of the State of Mississippi, RUSSELL D. MOORE, III, individually and as Judge of the County Court for Hinds County, Mississippi, WILLIAM L. WALLER, individually and as District Attorney for the Seventh District of the State of Mississippi, ALLEN THOMPSON, individually and as Mayor of the City of Jackson, Mississippi, JACK TRAVIS, individually and as Prosecutor for the City of Jackson, Mississippi, W. D. RAYFIELD, individually and as Chief of Police of the City of Jackson, Mississippi, J. L. RAY, individually and as Deputy Chief of Police of the City of Jackson, Mississippi, and ROSS R. BARNETT, DEFENDANTS

This is an action brought by Lois Chaffee, a citizen of the State of Idaho, against Paul B. Johnson, Jr., Governor of the State of Mississippi, Joe T. Patterson, Attorney General, Leon F. Hendrick, Circuit Judge, Russell D. Moore, III, County Court Judge, William L. Waller, District Attorney, Allen Thompson, Mayor of the City of Jackson, Jack Travis, City Prosecutor, W. D. Rayfield, Chief of Police of the City of Jackson, J. L. Ray, Deputy Chief of Police, and Ross R. Barnett,

former Governor of the State of Mississippi. Plaintiff seeks to enjoin the defendants from prosecuting plaintiff under an indictment for perjury returned by a grand jury of Hinds County, Mississippi. Her complaint also demands damages from said defendants for alleged violations of her civil rights.

The complaint alleges that plaintiff is presently awaiting trial under an indictment returned by a grand jury charging her with perjury while testifying in a criminal action in the County Court of Hinds County, Mississippi, on October 15, 1963. It is alleged that the defendants entered into a conspiracy to have the plaintiff indicted and prosecuted for perjury for the purpose of intimidating and discouraging plaintiff and others from engaging in civil rights activities. The various defendants filed answers denying the material allegations of the complaint.

The evidence offered by all parties on hearing of plaintiff's motion for a temporary restraining order wholly failed to substantiate the charges made by plaintiff against the defendants. Although plaintiff was present during the hearing, she did not testify in support of the allegations of her complaint. The defendants took the stand and denied the above mentioned allegations of the complaint unequivocally. The plaintiff has, therefore, wholly failed to make a showing which would entitle her to the temporary restraining order which she seeks.

It is not for this Court to determine either the innocence or guilt of the plaintiff of the offenses for which she stands charged in the Courts of the State of Mississippi. All rights of the plaintiff, including her constitutional rights, will be protected by the State Courts. As an effort to enjoin the prosecution of the plaintiff for perjury in the State Court, the injunction sought herein is prohibited by 28 U.S. Code, Section 2283. H. J. Heinz Co. v. Owens, U.S.C.A.9th, 189 F.2d 505; T. Smith & Son, Inc. v. Williams, U.S.C.A.5th, 275 F.2d 397; Wilson v. Schnettler, 365 U.S. 381, 5 L.Ed.2d 620, 81 S.Ct. 632. Said Section 2283 is not suspended or modified by the Civil Rights Act. Smith v. Village of Lansing, U.S.C.A.7th, 241 F.2d 856; Goss v. State of Illinois, U.S.C.A.7th, 312 F.2d 257. The statutory prohibition is not avoided by enjoining state officials rather than the State Court itself. Sperry Rand Corporation v. Rothlein, U.S.C.A.2nd, 288 F.2d 245; Furnish v. Board of Medical Examiners of Calif., U.S.C.A.9th, 257 F.2d 520; Amalgamated Clothing Workers v. Richman Bros., 1955, 348 U.S. 511, 75 S.Ct. 452, 457, 99 L.Ed. 600; Toucey v. New York Life Ins. Co., 314 U.S. 118, 62 S.Ct. 139, 86 L.Ed. 100. Counsel for plaintiff rely primarily on United States v. Wood, U.S. C.A.5th, 295 F.2d 772, which holds that Section 2283 is inapplicable to a suit brought by the United States. This clearly distinguishes it from the case at hand.

If this Court had the authority to issue the injunction prayed for, it would not, as a federal Court of equity, issue such injunction in view of the facts disclosed at the hearing. Cleary v. Bolger, 371 U.S. 392, 9 L.Ed.2d 390, 83 S.Ct. 385; Wojcik v. Palmer, U.S.C.A.7th, 318 F.2d 171; Douglas v. Jeannette, 319 U.S. 157, 87 L.Ed. 1324; Watchtower Bible & Tract Soc. v. City of Bristol, 24 F.Supp.

57, affirmed 305 U.S. 572, 83 L.Ed. 361. An injunction staying State criminal proceedings is an extraordinary remedy which will not be indulged in by a Federal Court of equity except in a case clearly demanding it. Bailey v. Patterson, 366 U.S. 346, 7 L.Ed.2d 332, 82 S.Ct. 282; Warner Bros. Pictures v. Gittone, U.S.C.A.3rd, 110 F.2d 292; Murray Hill Restaurant v. Thirteen Twenty One Locust, U.S.C.A.3rd, 98 F.2d 578; American Mercury v. Kiely, U.S.C.A.2d, 19 F.2d 295; 1 Joyce on Injunctions, Sec. 109A; 1 High on Injunctions, Sec. 10; South Carolina Power Co. v. South Carolina Commission, 286 U.S. 525; 52 S.Ct. 494, 76 L.Ed. 1268; United States v. Corrick, 293 U.S. 435, 56 S.Ct. 829, 80 L.Ed. 1263; Meccano v. Wanamaker, 253 U.S. 136, 40 S.Ct. 463, 64 L.Ed. 822; Westinghouse Electric Corp. v. Free Sewing Mach. Co., U.S.C.A.7th, 256 F.2d 806; Meiselman v. Paramount Film Distributing Corp., U.S.C.A.4th, 180 F.2d 94.

The complaint alleges, and counsel for plaintiff contend that plaintiff will not receive a fair trial in the Courts of the State of Mississippi. There is no factual basis for any such contention, and there is a strong legal presumption to the contrary. Harrison v. N.A.A.C.P., 360 U.S. 167, 3 L.Ed.2d 1152; Hawk v. Jones, U.S.C.A.8th, 160 F.2d 807; N.A.A.C.P. v. Bennett, D.C. Ark., 178 F.Supp. 191; Browder v. City of Montgomery, D.C. Ala., 146 F.Supp. 127.

Realizing that their proof did not support the allegations of the complaint against the defendants, counsel for plaintiff, at the hearing, took the position that an injunction should issue to protect the class which plaintiff purported to represent. The complaint described the alleged

class as all persons who are workers for the end of discrimination and segregation in Mississippi, for the encouragement of the exercise by Negroes in Mississippi of their right to vote and to register to vote, and for the exercise and preservation of civil rights generally in Mississippi. Clearly this is not a proper class action. The vague and indefinite description of the purported class depends upon the state of mind of a particular individual, rendering it difficult, if not impossible, to determine whether any given individual is within or without the alleged class. The members of a class must be capable of definite identification as being either in or out of it. Giordano, et al v. Radio Corp. of America, et al, U.S.C.A.3rd, 183 F.2d 558; Mitchell v. Wright, et al, D.C.Ala., 62 F.Supp. 580; Reddix v. Luckey, U.S.C.A.5th, 252 F.2d 930. Plaintiff cannot make this a class action by merely calling it such. Whether this is a proper class action involves a question of fact with the burden of proof on the plaintiff. This burden has not been met in this case. Clark v. Thompson, D.C. Miss., 206 F.Supp. 539, affirmed 313 F.2d 637, cert. den. 11 L.Ed.2d 312.

The Writ of Injunction and Writ of Habeas Corpus are extraordinary writs and neither should be granted unless the facts require it. It is a general rule that a Writ of Habeas Corpus will not be granted, nor a Writ of Injunction enjoining the prosecution by the State in the State Courts of a criminal action pending therein. A recent case from this circuit is that of Lucien Richards and James Brown v. Rayfield, Chief of Police, 320 F.2d 96, cert denied 11 L.Ed.2d 143. In this case emphasis is placed upon the case of In Re Wyckoff, and

the doctrine of the Wyckoff case was reaffirmed by Judge Tuttle in the Richards and Brown case. The opinion of the Court of Appeals in the Wyckoff case is not reported by West Publishing Company, but is reported in 6 Race Relations Law Reporter 793, and a lengthy opinion reviewing many of the authorities was written by the District Judge which is reported in 196 F.Supp. 515. The Court of Appeals affirmed the District Court in the Wyckoff case, and application was then made to Mr. Justice Black and Mr. Justice Clark of the Supreme Court, and they, acting for the Supreme Court, denied the writ on the theory that the applicant had not exhausted state remedies. Judge Tuttle wrote a strong opinion indicating that before an applicant would be entitled to a writ he must show that he has exhausted all available state remedies even to the extent of applying to the State Court for a Writ of Habeas Corpus before coming into Federal Court. This rule of law is equally applicable to a petition seeking to enjoin a State authority from prosecuting a criminal case.

Plaintiff's motion for a temporary restraining order is denied.

SO ORDERED, this 18th day of May, 1964.

S. C. Mize
UNITED STATES DISTRICT JUDGE

The Grand Jurors for the State of Mississippi, taken from the body of good and lawful men of the First Judicial District of Hinds County, in the State of Mississippi, elected, impaneled, sworn, and charged to inquire in and for said District, County and State aforesaid, in the name and by the authority of the State of Mississippi, upon their oaths present: That

Lois C. Chaffee

in said District, County and State on the 15th day of October A. D., 1963

then and there having been sworn and being under oath as a witness in a trial upon an affidavit charging a misdemeanor in Hinds County Court, First Judicial District, Hinds County, Miss., Cause Number 13791, did wilfully, falsely and corruptly swear and testify as follows, to-wit: "The children would hold onto the flags and they were lined up, and they had two police going down, getting on either side one at a time, and the police would grab their flags and they had their sticks ready and if the children would hold onto their flags, they crack their sticks - in effect, everybody who was holding on to their flag was getting their head cracked and being clubbed down, and - - ", and further at said time and in the manner and form aforesaid the said Lois C. Chaffee did wilfully, falsely and corruptly swear and testify, "So, the policemen would grab the flags and pull at it, and if there was any resistance, just with the other hand he'd knock them over the head and knock them on the ground. I mean, these billy clubs inflict a bad blow," and further at said time and in the manner and form aforesaid she did wilfully, falsely and corruptly swear and testify, "I would say I saw three or four incidents where I was sure they were hit by the police, but I only saw one child fall with blood gushing and all, you know, right in front of me. I saw lots of bloody heads, ---", all of which said testimony and false swearing the said Lois C. Chaffee well knew to be false, and fraudulent, and said testimony being material to the issues of said trial, all of which

contrary to the form of the statute in such cases made and provided, and against the peace and dignity of the State of Mississippi.

John H. Fox
Asst. District Attorney.

APPENDIX D, PAGE 1

APPEARANCE BOND

STATE OF MISSISSIPPI }
COUNTY OF HINDS }

We, Lois C. Chaffee, Principal and ____

and ____, Sureties agree and bind ourselves to pay unto the State of Mississippi in the penal sum of $2,000.00 Dollars ($ 2,000.00) unless the said Lois C. Chaffee shall appear before the Circuit Court of Hinds County, at the next term thereof held at the Courthouse in the First Judicial District of said County in the City of Jackson, on the 4th day of November, 19 63 to answer a charge of Perjury ____ and then and there remain from day to day and term to term, until discharged by law, said charge being by ____

Witness our signatures this the 15th day of October, A. D., 19 63.

Principal Lois Chaffee Address 806 Ivy St. Plaq

Surety ____ Address ____

Surety ____ Address ____

SURETIES OATH

STATE OF MISSISSIPPI }
COUNTY OF HINDS }

Personally appeared before me ____ of said County ____ and ____ and ____ Sureties on the within bond, who each being duly sworn, state on oath, that they are worth, in property in Hinds County, subject to execution at law, over and above all indebtedness and exemptions the amount of this bond.

____ Surety

____ Surety

____ Surety

Sworn to and subscribed before me, this the ____ day of ____, 19 ____

____

APPROVED, this 15th day of October, 19 63

Attorney ____ J. R. GILFOY, Sheriff, Hinds County, Miss.

Phone ____ By Carolyn Chappell Deputy

APPEARANCE BOND

STATE OF MISSISSIPPI
COUNTY OF HINDS

We, Lois Chaffee, Principal and THE YORKSHIRE INSURANCE COMPANY OF NEW YORK

and ______________________, Sureties agree and bind ourselves

to pay unto the State of Mississippi Five Thousand

Dollars ($ 5,000.00) unless the said Lois Chaffee

shall appear before the Circuit Court of Hinds County,

at the next term thereof held at the Courthouse in the First Judicial District of said County in the City of Jackson, on the 6th day of January, 19 64

to answer a charge of Perjury

______________________ and then and there remain from day to day and term to term, until discharged by law, said charge being by

Indictment

Witness our signatures this the 23rd day of December, A. D., 19 63.

Principal Lois Chaffee Address 1017 Lynch St, Jackson, Miss

Surety ______________________ Address ______________________

Surety THE YORKSHIRE INSURANCE COMPANY OF NEW YORK Address 80 Maiden Lane,
New York, N. Y. 10038

By Carroll R. Young
Carroll R. Young, Vice President

Resident Mississippi Agent

SURETIES OATH

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me ______________________

______________________ of said County

and ______________________ and ______________________

Sureties on the within bond, who each being duly sworn, state on oath, that they are worth, in property in Hinds County, subject to execution at law, over and above all indebtedness and exemptions the amount of this bond.

______________________ Surety

______________________ Surety

______________________ Surety

Sworn to and subscribed before me, this the ______ day of ______________, 19 ___

____

APPROVED, this 27 day of December, 19 63

Attorney ______________________ J. R. GILFOY, Sheriff, Hinds County, Miss.

Phone ______________ By J. R. Gilfoy Deputy

(NOTARIAL ACKNOWLEDGMENT)

INDIVIDUAL ACKNOWLEDGMENT

State of ____________ }
County of ____________ } ss.:

On this ____________ day of ____________, in the year 19____, before me personally came ____________, to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

____

PARTNERSHIP ACKNOWLEDGMENT

State of ____________ }
County of ____________ } ss.:

On this ____________ day of ____________, in the year 19____, before me personally came ____________, a member of the copartnership of ____________, to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as and for the act and deed of the said copartnership.

____

CORPORATE ACKNOWLEDGMENT

State of NEW YORK }
County of NEW YORK } ss.:

On this 23rd day of DECEMBER, in the year 1963, before me personally came CARROLL R. YOUNG to me known, who, being by me duly sworn, did depose and say that he resides in BERKELEY HEIGHTS, NEW JERSEY; that he is the VICE PRESIDENT & ATTORNEY of the THE YORKSHIRE INSURANCE COMPANY OF NEW YORK the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation, and that he signed ths name thereto by like order.

HELEN PALIOTTO
Notary Public, State of New York
No. 03-8259755
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires March 30, 1964

Helen Paliotto

Bond 843A

Printed in U.S.A.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

I, the undersigned, a Secretary of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK, a New York corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at the City of New York. Dated the 23rd **day of** December, 1963.

F. J. Miller
Secretary

31 Bond 4317-A

THE YORKSHIRE INSURANCE COMPANY
OF NEW YORK

GENERAL POWER OF ATTORNEY

Know all men by these Presents, That THE YORKSHIRE INSURANCE COMPANY OF NEW YORK has made, constituted, and appointed, and by these presents does make, constitute, and appoint

Carroll R. Young of New York, New York

its true and lawful attorney, for it and in its name, place and stead to execute on behalf of the said Company, as surety, bonds, undertakings and contracts of suretyship to be given to

all obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of Unlimited

Dollars.

This Power of Attorney is granted and is signed and sealed by the authority of the following Resolution adopted by the Board of Directors of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK at a meeting duly called and held on the 18th day of May, 1961:

"RESOLVED, that the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President or any Vice President of the Company, be, and that each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK, bonds, undertakings and all contracts of suretyship; and that any Secretary or any Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company."

In Witness Whereof, THE YORKSHIRE INSURANCE COMPANY OF NEW YORK has caused its official seal to be hereunto affixed, and these presents to be signed by the Chairman of the Board and attested by one of its Secretaries this 31stday of December 1962.

THE YORKSHIRE INSURANCE COMPANY OF NEW YORK

By J. V. Herd

Chairman of the Board

Attest

F. J. Miller

Secretary

STATE OF NEW YORK,
ss.:
COUNTY OF NEW YORK,

On this 31stday of December, 1962, before me personally came J. V. Herd, to me known, who being by me duly sworn, did depose and say that he resides in Brooklyn, N. Y. in the County of Kings, State of New York, at 2 Montague Terrace; that he is Chairman of the Board of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Helen Paliotto

Notary Public

HELEN PALIOTTO
Notary Public, State of New York
No. 03-[illegible]59755
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires March 30, 1964

CERTIFICATE

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

I, the undersigned, a Secretary of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK, a New York corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at the City of New York. Dated the 23rd day of December, 1963.

F. J. Miller

Secretary

31 Bond 4317-A

JUSTIFICATION

The Yorkshire Insurance Company of New York

FINANCIAL STATEMENT AS OF DECEMBER 31, 1962

ASSETS	
Cash	$ 629,934
*Bonds and Stocks	16,522,912
Interest, Dividends and Rents Accrued	79,186
Agents' Balances Receivable	1,317,911
Other Assets	445,158
Total Admitted Assets	$18,995,101

Includes Securities Deposited as Required by Law..$1,183,340

LIABILITIES, CAPITAL & SURPLUS	
Reserve for Unearned Premiums	$ 6,659,894
Reserve for Losses	5,864,228
Reserve for Taxes and Expenses	282,199
Reserve for Other Liabilities	345,686
Total Liabilities	13,152,007
Capital	1,500,000
Contingency Reserve	500,000
Surplus	3,843,094
Policyholders' Surplus	5,843,094
Total Liabilities, Capital & Surplus	$18,995,101
Policyholders' Surplus—Market Basis	*$6,434,246*

At the regular meeting of the Board of Directors of The Yorkshire Insurance Company of New York on the 29th day of November 1962, a quorum being present the following resolution was unanimously adopted:

RESOLVED, That each of the following persons, to wit: J. V. Herd, Chairman of the Board; N. Dekker, Vice Chairman of the Board; Nathan H. Wentworth, President; T. E. O'Brien, E. J. Ryan, Walter D. Sheldon and Carroll R. Young, each a Vice President; Edward M. Bersano, A. J. Miller, James Strain and M. J. Tanz, each a Secretary; William A. Bannon, Jr., Arthur C. Borgeson, Robert B. Budelman, James F. Burns, Arthur T. Clayton, Eugene P. Dougherty, P. L. Douglass, H. J. Hermann, Eugene F. Hession, James M. Keane, Clarence H. Kenyon, Joseph S. Lynch, John E. Maher, Joseph B. Mettalia, Robert L. Overland, F. T. Paterson, Harold J. Pottinger, Ethel E. Punger, M. E. Raesecke, Joseph C. Reiners, Charles J. Riffelmacher, Randolph Rostin, Robert W. Schmitt, Daniel J. Sullivan, Floyd Sykes, Joseph J. Thomas, J. C. W. Thompson, E. E. Wells, W. R. Wells, William J. White and Arline M. Witbeck, each as an attorney, is hereby authorized to execute on behalf of The Yorkshire Insurance Company of New York bonds, undertakings and contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, and to attest the corporate seal of the company to any and all bonds, undertakings and contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, signed by any of the said persons, provided—

1. That the authority herein granted to Arthur C. Borgeson, Robert B. Budelman, P. L. Douglass, Eugene F. Hession, James M. Keane, F. T. Paterson, Joseph C. Reiners, Daniel J. Sullivan, J. C. W. Thompson, William J. White and Arline M. Witbeck, shall be limited to bonds, undertakings or contracts of suretyship of not more than one million dollars, unless the said bonds, undertakings or contracts of suretyship, including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, shall also be signed by the Chairman, the Vice Chairman, the President, one of the Vice Presidents or one of the Secretaries named above.

2. That the authority herein granted to H. J. Hermann, Joseph S. Lynch, John E. Maher, Randolph Rostin, Floyd Sykes and W. R. Wells, shall be limited to bonds, undertakings or contracts of suretyship of not more than five hundred thousand dollars, unless the said bonds, undertakings or contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, shall also be signed by the Chairman, the Vice Chairman, the President, one of the Vice Presidents or one of the Secretaries named above.

3. That the authority herein granted to William A. Bannon, Jr., James F. Burns, Clarence H. Kenyon, Robert L. Overland, Ethel E. Punger, M. E. Raesecke and Charles J. Riffelmacher, shall be limited to bonds, undertakings and contracts of suretyship of not more than one hundred thousand dollars, unless the said bonds, undertakings or contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, shall also be signed by the Chairman, the Vice Chairman, the President, one of the Vice Presidents or one of the Secretaries named above.

4. That the authority herein granted shall be effective January 1, 1963 and shall expire December 31, 1963.

RESOLVED, further, that the appointment of each of the persons named herein to his or her respective office or position is hereby confirmed and that the said appointees be, and each of them is, authorized and empowered to certify under seal, a copy of the foregoing resolution.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

A. J. MILLER, to me known, being by me duly sworn, deposes and says that the affiant resides in GLEN RIDGE, NEW JERSEY that the affiant is an SECRETARY of The Yorkshire Insurance Company of New York, the corporation which is described in and which executed the annexed instrument; that the affiant knows the corporate seal of said corporation; that the seal affixed to the annexed instrument is the corporate seal of The Yorkshire Insurance Company of New York, and was thereto affixed by order and authority of the Board of Directors of the said company; ~~and that the affiant signed the affiant's name thereto by like order and authority of the company~~. The affiant further deposes and says that the foregoing financial statement of The Yorkshire Insurance Company of New York, to the best of the affiant's knowledge and belief is a full, true and correct statement of the financial condition of the said company on the 31st day of December, 1962, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by law; and that the said company has received from the Superintendent of Insurance of the State of New York a certificate of solvency and of its sufficiency as surety, or guarantor, pursuant to the Insurance Law of the State of New York and the Acts amendatory thereof and supplemental thereto, and that such certificate has not been revoked. The affiant deposes and says that the affiant has compared the foregoing resolution of the Board of Directors of the said company with the original thereof, as recorded in the minute book of the said company, and does hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said resolution, and the same is now in full force, and that the seal affixed hereto is the corporate seal of the said company.

Subscribed and sworn to before me

this 23rd day of DECEMBER, 1963.

A. J. Miller
A. J. MILLER, SECRETARY

Ralph F. Meade

RALPH F. MEADE
Notary Public, State of New York
No. 30-7877650 Qualified in Nassau County
Cert. filed in New York County
Commission Expires March 30, 1964

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file Chaffee 12/2

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Chaffee case

We should get info. so we can get money from SEDF.

+ both recommendations
now for Jim + Nancy

2) They are paying
on the Chaffee case
except the $500 for
O'Dwyer at the time.

f/u

February 27, 1964

Karsey Hall, Esq.
115½ North Farish
Jackson, Mississippi

Re: Lois Chaffee

Dear Karsey:

Mr. Paul O'Dwyer and I met yesterday to discuss the Lois Chaffee case. We are preparing a complaint for the Federal Court in Jackson, It is important that we inspect the Grand Jury minutes in this case. Would you be able to to make a motion to inspect the minutes? If there is any problem, please call me at the CORE office.

With kindest regards,

Carl Rachlin
General Counsel
Congress of Racial
Equality

CR:mh

LAW OFFICES
YOUNG & HALL
SUITE 207 - 208 - 213 REDMOND BUILDING
115½ N. FARISH STREET
JACKSON, MISSISSIPPI

JACK H. YOUNG
CARSIE A. HALL

PHONES: FL. 2-7484
FL. 4-3135

MAR 11 1964

March 9, 1964

Mr Carl Rachlin
General Counsel
CORE
38 Park Row
New York, New York

Re: Lois Chaffee

Dear Mr Rachlin:

I am confused about my status in Miss Chaffee's case.

Mr O'Dwyer asked Miss Chafee to procure for him a transcript of the trial which was had in the County Court. Later, you wrote to me asking that I procure for you a copy of the indictment. Still later, you wrote to Carsie and asked that he file a motion with the circuit court demanding to inspect the minutes of the grand jury.

The letter to Carsie stated that you were in the process of preparing papers to remove the case to Federal Court. The removal has not been discussed with me and, as far as I know, it has not been discussed with Carsie.

Not having been consulted about steps to be taken in the case, I take the position that I am not the local counsel. Based on the success which has been had in previous cases which were removed to Federal Court, there are some serious doubts in my mind as to whether or not the procedure will work in this case.

As I understand it, the petition for removal must allege that the civil rights of the defendant have been violated. The petition must be signed by local counsel and, frankly, I would be somewhat reluctant to sign a petition under the circumstances.

Miss Chaffee's case has not yet been set for trial. However, I feel that if the case is to be removed to

Federal Court that some definite contact should be made with local counsel as soon as possible.

Yours very truly,

Jack H Young

Jack H. Young

JHY/mok

March 12, 1964

Legal Department
Columbia Broadcasting System
485 Madison Avenue
New York, New York

Dear Sirs:

Same letter to Legal Dept. N.Y. Times

This letter is written in behalf of Lois Chaffee, a CORE voter registration worker in Jackson, Mississippi, who was arrested during the demonstration of marching students carrying flags on Rose Street in Jackson on June 13, 1963 (two days after Medgar Evers was shot and killed). Lois was subsequently convicted for disturbing the peace under a Jackson municipal ordinance. An appeal from that conviction is now pending.

At her trial Miss Chaffee testified with repect to the use of force used by police officers during the demonstration and related arrests. As a result she was charged with perjury and indicted by the Grand Jury on that charge. The crime of perjury in Mississippi is punishable by a sentence of as much as ten years' imprisonment. The date for Miss Chaffee's trial has been set for March 23. The police, of course, despite many newspaper and television reports, testified to the contrary.

The possibility for a civil rights worker to obtain a fair trial in the courts of the State of Mississippi because of that State's rigid segregation policies is extremely limited. The best hope for saving Miss Chaffee from being convicted of perjury lies in the possibility of a petition to the federal courts for an order staying the state prosecution on the ground that such prosecution is intended solely to intimidate and punish Miss Chaffee for her civil rights work and therefore violates her Constitutional rights. To support such a petition it will be necessary for us to have documentation of the events in Jackson on June 13, 1963, and in particular of the behavior of the police with respect to the use of billy clubs in connection with the flag-marchers on Rose Street and the arrests which arose out of their march and out of the surrounding crowd's reaction to the behavior of the police.

Such documentation, whether in the form of affidavits, on-the-spot photographs, news articles, scripts of news broadcasts, or whatever is extremely hard to find but desperately needed. Because those who live in Mississippi tend to have a fear of reprisal by local authorities, it has been nearly impossible for us to get the statements in affidavits from eye-witnesses of which we have greatest need. We have been told by a number of people who were there that you had reporters and photographers on the scene in Jackson that day. If any of your men saw the Jackson police use their clubs or exert any other force that day, I would appreciate very much your sending me any statements they are willing to sign and the names of any of them who are willing to speak with me over the telephone about what happened in Jackson on June 13, 1963. Our need, as I have said, is desperate; and the time is very much of the essence.

Thank you very much for whatever assistance you may be able to offer me.

Sincerely,

Carl Rachlin
General Counsel

CR:mh

COPY

LAW OFFICES
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SUITE 207 - 208 - 213 REDMOND BUILDING
115½ N. FARISH STREET
JACKSON, MISSISSIPPI

JACK H. YOUNG
CARSIE A. HALL

PHONES: FL. 2-7484
FL. 4-3135

March 18, 1964

MAR 23 1964

Judge Leon F. Hendricks
Hinds County Court House
Jackson, Mississippi

Re: State of Mississippi
vs. Lois Chaffee, Hinds
County Circuit Court

Dear Sir:

This is to inform the Court that we no longer represent the defendant, Miss Lois Chaffee, in the above styled cause.

Respectfully yours,

JACK H. YOUNG
CARSIE A. HALL

BY Jack H Young
JACK H. YOUNG

JHY/mok

cc: Mr. William L. Waller
District Attorney
Milner Building
Jackson, Mississippi

Miss Lois Chaffee
1017 Lynch Street
Jackson, Mississippi

Mr Carl Rachlin
38 Park Row
New York, New York

Mr Paul O'Dwyer
38 Park Row
New York, New York

The New York Times
Times Square

LEGAL DEPARTMENT
JAMES C. GOODALE
GENERAL ATTORNEY

MAR 27 1964

March 24, 1964

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York, N. Y. 10038

Dear Mr. Rachlin:

I am sorry that you found my reply of March 18 unsatisfactory. I have discussed your request again with the appropriate executives at The Times and must again tell you we are not able to ask our reporters to assist your litigation efforts. I trust that, on reflection, you will see our difficulty in fulfilling your request. We believe that to do so would only, in the long run, impede the free flow of news which we all believe to be so important.

Very truly yours,

James C. Goodale

James C. Goodale

JCG:C

MAR 31 1964

COUNCIL OF FEDERATED ORGANIZATIONS
1017 LYNCH ST. - P. O. BOX 2896
JACKSON, MISSISSIPPI - 39205

March 30, 1964

Dear Brad (really Dear Everybody):

I'm sorry that I didn't get ~~xxxx~~ this to you sooner, but as you can see by the embarrassing length, it took me forever to sort out impressions, put them into some kind of sequence, and I even made weak efforts to Condense. I hope the length is not too staggering, and that some~~xxx~~ where in all that stuff is what you wanted. To the great credit, I guess, ~~x~~ of Hinds County, not one damned thing happened to me except the freedom button and the telephone call that I would complain of to a federal judge, and that stuff sounds pretty pale. The other 5,000 words represent an effort to show what the general atmosphere is like, and how the place gets on your NERVES. If I'm apprehensive about Parchman, it's not because of possible brutality, but just because of the kind of thing I outlined here--the fact of serving time, with uncongenial people. Nevertheless I ~~xxxxxxx~~ apologize for the length. Being ASKED to talk about jail is a new one --the sensation is like being asked to talk about your operation. Too good a chance to pass by. I just wish I'd had time to work it over more and ~~xxxx~~ really have fun with it.

I'll work on other people's stories now. I did a little shopping around, and I think tha people we already have, probably ~~xxx~~ have the worst jail stories to tell. Mrs. Hamer was in the Winona thing, which is the worst single incident in recent times. I'll write that up and send it. Lawrence Guyot was, too, and has other incidents as well. I believe he was in Parchman last summer and there was some violence involved. I'll find out. Dave Dennis had some bad encounters in Louisiana jails. If Pete Stoner is out in time, he could tell of some recent atrocities (within the last few weeks) Jesse Harris was beaten badly a couple of years ago on the Hinds County farm (still has a bad back as a result), which is as close to home as I can get for atrocities. ~~xxxxx~~ All of these pepple, ~~xxxxx~~ excepting Pete tell stories EXCELLENTLY. Also I think that George Raymond is a good person to tell of numerous small incidents of beatings, because he tells the story in such a simple (really stupid) but very touching way. I'll send you rough outlines, but you really have to hear. Mrs. Hamer's story is on some tape which I think Ed Hollander sent to the New York CORE office. You might want to check. I've heard that tape, and it's very good, if they have it.

Will you all be ~~x~~ down here ~~x~~on April 6? Guyot and I are getting people out to Tougaloo that day. I think we'll have lots of time to talk. I would like some more specific information about that. Also about these subpoenas. I think we should serve them early if we're going after the same ones again, because they won't be easy to fool again if ~~xxxx~~ they're expecting us. Please let me know; ~~xxx~~ Loryce told me all about a simpler way to make out the return of service forms, and we're all eager to improve our technique.

Thanks for everything. cc: Mr. Rachlin and Mr. O'Dwyer.

Lois

[illegible]

[illegible] believe [illegible] the fact, however, that it is difficult to have people [illegible] observations about my personal affairs.

II. [illegible] conditions. In jail, you tend to spend most of your time [illegible] creature comforts, and in retrospect, most of my [illegible] the food, heat, plumbing and neighbors.

[illegible] discomfort)
1. personalities of others
2. heat
3. food
4. filth

1. Personalities of others. The three jailers were Mr. [illegible] jailer, and [illegible] somebody, the Saturday jailer, [illegible] and Mr. Kelly's day off. [illegible] and now he was also a corporal. [illegible] got in jail was when he [illegible] brought me in [illegible] not to have anything to do with me because [illegible] that's pretty tame, but that's the only [illegible] he didn't like anything which made [illegible] Mr. Kelly was an old man (so was Mr. [illegible]), who was in line to retire [illegible] with the Barnett administration. [illegible] he started getting friendly [illegible] jailer was by far the most [illegible] you do anything that he didn't [illegible]

[illegible] were all right, but [illegible] this country [illegible]

[illegible] I was [illegible]

[illegible] very unpleasant [illegible] he would be very much in love with one of them [illegible] I thought [illegible] but I [illegible] I had been given [illegible] I didn't know (or think) to ask, and it was [illegible] one of the other prisoners [illegible] blanket. [illegible] turned out [illegible] it was [illegible]. When it got really cold, the [illegible] jailer came in one [illegible] the window was [illegible]. I didn't tell him, and I think he [illegible] it was too cold to keep me in the [illegible] cell. [illegible] down the block to a cell next to a heater, and I spent the rest of my time, about a week or ten days, in that cell. I pulled a mattress [illegible] and put it on the floor as near the heater as possible, and was much more comfortable.

2. Food. I can remember the weekly menu and append it if you like. I think this is a bad idea, however; once, when I was [illegible] feeling very frustrated because the jailer hadn't talked to me in three days, I [illegible] to write an exposé, revealing all the depths of the spiritual [illegible] of prison life. I wrote it in a great fury, and when I finished I reread it and found that I had devoted approximately ninety per cent of the article to a dry description of the food. [illegible] how important the food is to somebody in jail. [illegible] time--by the meals; I could tell [illegible] it was by the meals, and waiting for the next meal [illegible] ways to relieve boredom. It's like your shut-in [illegible] from breakfast until dinner think about dinner, [illegible] until supper think about supper. I resisted, but [illegible] into that [illegible] mentality.

3. Filth. [illegible] filth for [illegible] the last in degree of [illegible]. The jail was clean, but [illegible] two or three very [illegible] [illegible] so I could [illegible] the next day. [illegible]

Saturday was a big day. The food is better on Saturday [illegible] (red beans and rice). Also, Mr. Hutton had his day off [illegible] me, too.), and the weekend jailer, though obviously a [illegible] nicer. He even let me out of the cell to take a bath in the [illegible] women's cell (My place had only cold water, and it xxxx hadn't yet sunk in on me that I was in for quite a while.) Later in the afternoon he brought me an anonymous present (Walden and a package of [illegible] best things you could possibly have in jail.) and about a half-hour af after that I had a xxx real visit. Jack Young came to see me and brought a package from Jeannette King. After that, life xt was easier, and I settled down quite a bit. She sent soap and a towel, fruit (totally lacking in the jail diet, except for Christmas day), a change of clothes and books. I never did finish Kierkegaard,but I read all the others and wrote a short story on the paper xxx Carsie Hall finally brought me. After that Saturday, I really had lots to do. And as time went on, we found more and more stuff to do. If I had xxxx stayed, I might have reached the point where I was busy. That night Betty woke us up in the middle of the night pacing up and down the floor shrieking about something. She was having a real low mood. I finally figured out that she MUST be drunk, but it was the next Saturday before I found out how she did it.

Sunday there was more religious counsel--morning and afternoon. Also I believe that was the day Mr. Hutton let me move out of the cold cell into another cell which was close to a heater. The weather was very cold, and the heater made a big difference. Also the newcell had hot water. I stayed there until I got out.

Sometime early in the next week Ann's story broke. This was the most important thing that happened while we were there, in terms x of impact upon our daily lives. Down at the County Fxarm, the authorities discovered that a girl named Ann was pregnant, and she told them that xx it had happened while she was up at the County Jail, and that one of our trustees had "done it". I had been locked up in the cell since the first day, but all the other women were allowed to walk around from cell to cell within the cell xxx block. After xxxx they found out about Ann, however, they locked all of up up. Even though I wasn't directly affected, it was bad. Now nobody could come down to my end to talk, or get me something, and the morale dropped (I.E. Betty got nasty-tempered) So I was as mad as anybody. The reason xx the woman got pregnant had nothing to do with how we were treated -she was a woman trustee, and the Jailer had let her out onto the hall where the trustees congregated to to his wife's ironing. This happened about twice a week, and he was lazy and didn't take x care to lock her up again after she was through with the ironing, so she and Willie the trustee had had xx time to go back to the storeroom. She even claimed that Mr. Xxx Hutton knew they were going together and thought it was funny. The thing certainly couldn't have been prevented by locking up the other women. But that, I found out, is the way x jails typically operate. They dept everybody locked up for the rest of the time I was there, but when they brought a new girl in- Ferita--xxxxx later in the week, they put her on the corrider in xxxxxx front of our cells so she could keep it swept up and carry the trays around (exactly the same position Ann had had.).x

Ferita was another major event for mex. She was the first person there xx who could by any stretch of the imagination be called companionable. She was Negro, had almost participated in a demonstration last summer(

(somebody told her at the last minute that if she went, with her record, the movement would be made to look bad), ran a restaurant when she was out of jail, and best of all, had been a maid in Ross Barnett's household. She told me about his nagging, nervous wife who had bunions, about his spoiled youngest daughter who stole a car from the state and other good stories about the governor's private life. Also we talked for hours on end about good food, which is always interesting when you don't have any. She had two dogs, as I did, whom she wasn't sure were being properly cared for. We had a lot in common, and I made the most of it.

Wednesday, Ed King came to visit me, and this was indirectly the cause of an unpleasant incident. As my spiritual advisor (not visitor), he read the Bible to meand gave me some momey. He also told me that he had been given the runaround for a whole hour, until it was three minutes befoee visiting hours were over, and that finally he had threatened to make a stink over my being denied spiritual counsel Before he was allowed to see me. They were also rotten in that they made us stand on either side of the door (more favored prisoners were allowed out in the hall, and when my lawyers came, we were allowed a private visit, but Rev. King rated only the door treatment) and talk through a little grate. While we were talking, however, one of the trustees came up to Ed on his side of the door, asked him if he was Rev. King, shook his hand and told him inconfidence that he was a MEMBER OF THE NAACP. I thought this little thing was cute, and when I went back inside the cell, I told Ferita about it--within Betty's earshot. Later that afternoon, Mr. Hutton came by before he went home, on some kind of errand, and while he and Betty were billing and cooing (Mr. Hutton was able to find about three pressing reasons every day to go to the women's block, other than meal times, and he stopped by Betty's cell for about 15 20 minutes every time.) Betty told him about the trustee who said he belonged to the NAACP. She made a guess (wrong) about whidh one it was, and Mr. Hutton said, "I'll take it out of his ass." I don't know that he actually did, but in view of the fact that it is virtually unknown for a prisoner to tell the jailers on other prisnners, and a major sin in prison morality, it made me mad, and also made me realize what crackers, ultimately, will do.

Wednesday was also the start of one episode which got publicized in the papers as far away as Seattle, and which therefore made me think quite a bit. I had been asking about my parents and my dog ever since I had been in jail. I wanted to make either a local or a long distance call to check on them, because I didn't trust the people at the office to take care of Ivan unless specifically asked to (this turned out to be an unfair judgement. Mendy Samstein took off his belt and used it as a leash to bring Ivan to work every morning, because he was afraid Ivan would run off.) and I didn't know if my parents even knew I was in jail. I never claimed that I was being held incommunicado; I just said that it was traditional to allow people to make one telephone call, and I hadn't made one. (Betty was allowed to m ake calls freely, but I never mentioned that because I thought maybe it was part of a bargain, not routine treatment.) Interestingly enough, the jailers never told me that the call business was valid only if there was a question of being denied counsel; they told me that I had already made "as many calls as I was entitled to". After three days I started asking for it seriously--every time I got a chance. Mr Hutton solved this by never coming back my way. He hardly ever went any farther than Betty's cell anyway, but when he knew I wanted something he made a point of it. I got the big idea that if I was going to get a request for a telephone call any [illegible] On Friday [illegible] asked [illegible] I told [illegible] talked [illegible] We had [illegible] about I had [illegible] day, Saturday, [illegible] I was going to [illegible] didn't have [illegible] the cell. I used [illegible] I never did get to make that call. A [illegible] to be used with great caution and NEVER upon [illegible]'s home ground, I think.

Meanwhile on Thursday some more Mississippi College girls came, and my [illegible] lawyer Mr. Rosenthal had come in to see if I was all right.

One day along in here I got some mail. Mr. Hutton delivered it with an obvious smirk (the closest thing I ever saw to a smile on his) and a flourish. Thanks to an exaggerated story about my starving for freedom, I had got some letters from people I didn't know. None of them were crank letters, thank heaven, but they were almost as bad. Two of them were from very nice, I'm sure, colored ladies, one of whom identified herself only as "an American nigger woman" and who [illegible] seven dollars to start a fund for my freedom. The other lady was the grandmother type who was afraid I wouldn't live long if I didn't have supplementary vitamins. (I never saw anything resembling a vitamin in the jail food anyway.) The third letter was from the minister of my parents' church. He had come to the church since I left, so I had not met him at the time. He told me how he had called the leading white Methodist minister in Jackson (He just referred to him by name, as I recall, [illegible] easily assuming I'd know all the major white Methodist ministers.) and told him to come hotfooting over to minister to my spiritual needs. It was a nice, well-meaning letter, but the man's naivete was [illegible] and, I suppose, to Mr. Hutton. When I got out, I was told that my parents' minister had CALLED what's-his-name in Jackson, and [illegible] told that the Jackson minister had brought me two pieces of paper and a stamped envelope, so that I could write to my parents. At any rate I never got the stuff.

Sometime after Verita came, she got the idea to feed the mice. I had been sweeping fiendishly so that they wouldn't have any reason to come in my place, but I immediately agreed that hers was the better idea by far. One of the least appetizing things they served was [illegible] muffins. I usually sent them back to the kitchen. But I started saving the muffins, crumbled them up and laid them on the floor where I could see them come in to eat. Unfortunately I couldn't stay awake until they were really active usually. The first night we put crumbs out, [illegible] and then fell asleep while the mice ate. The crumbs were all gone the next day, though, so I knew we were on the right track. The next night was Christmas Eve, so I put out LOTS of crumbs and some [illegible]. The next morning the crumbs were gone, but so were the [illegible]. The next night they didn't eat the crumbs we left. We thought we had [illegible] them from overeating, but on the third day they reappeared [illegible] apparently they had dragged all those crumbs into their hole the [illegible] had feasted privately. After that we put only a few crumbs out. We had a few good times, and tried a few variations like putting only big crumbs out, so that they either had to fall all over themselves to carry the crumbs, or they had to knaw them down smaller. In gxxm general it was hard to get them to do anything interesting out in the open where we could see them. I tried to branch out into birds, but I didn't have any luck. I was too high, and there was a gkxg high wall about three feet outsid e our windows. (We didn't have much of a view of the City of Jackson) No bird thought of looking for crumbs there.

I'd be tattling if I wrote out what went on with Betty and the weekend jailer on Saturday night, But that explained how she got the stuff to drink. Besides, Perita was the one who had to suffer through most of it. It was on her end. Also, I can sleep through a lot.

Monday was Christmas Eve. They brought in a woman who had killed her husband within house. She was still shaking and couldn't talk. M Everybody was on her side. He had tried to beat her once too often, I guess, and she took after him with a butcher knife. She finally cooled off enough to tell Perita that she had barely touched him, that she hadn't meant to kill him, etc. Mr. Hutton had told Betty all the JJ juicy details earlier when he brought her in. When Mr. Kelly came on in the mxmxm evening, he apparently didn't know anything about her. He stood there in the corridor outside her m cell and interrogated her in his big booming voice right in frontm of the rest of us. He asked her her name, where she was from, etc. Then he asked her if she was married or single and she started to cry. He tried to ask her other stuff, but she just hollered louder, so he finally left muttering. But it was pretty pathetic, and it was a strange Christmas Eve for that family.

Either Christmas day or the day after, Carsie Hall came to see me again (The rat had promised to come back the next day- Sunday--when he had visited the first time, and I had made homemade Christmas cards for all my friends.). He brought some fruit, which was nice, and he told me that he had brought some nuts, but that they wouldn't let mm him bring them to me because I might try to flush the shells down the toilet. I'm pretty sure xxh that was the sheriff. Mr. Hutton's style was a little rougher. Anyway, it's fairly typical of the way they treated me. Nobody ever laid a hand on me, and I'm very glad, but when they wanted to be mean, the little digs were more fun as well as pxxxg being perfectly safe.

The day or so before I left, the white men upstairs tried to break jail. Mr. Kelly caught them. I wasn't violently fond of Mr. Kelly, but I didn't like the white boys, and I didn't like Mr. Hutton, so I was glad that Mr. Kelly got the credit.

The night before I got out Mr. Kelly came around (by that time he had been getting very friendly--almost grandfatherly. He called me "little bit".) and told me a long story about how he had talked to my daddy and they were going to get me out, and he hoped I wouldn't get myself into a mess again. He told me he wasn't mean, just strict, and showed xhm me the scars (I couldn't see them.) xmm on the top of his head where some niggers had liked to killed him during a break attempt because he got careless JUST ONCE. He was getting really sentimental,and, remembering that Mr. Kelly was leaving, but Mr. Hutton was staying (Mr. Kelly hadn't voted right, so he had to leave with the Barnett administration. It's typical that Mr. Hutton would be smart that way. I don't know how he got out of it when Ann told the sheriff that Mr. Hutton knew she was going with Willie.), I had a few righteous thoughts about good old Mr. Kelly. When our fellows who were arrested about the time I got out, got out, the first thing they told me was that Mr. Kelly had beaten Claude Weaver -for no reason, if there are reasons for beating people. Mr. Kelly was by far the nicest of the bunch to me, however. You never can tell.

At four o'clock (I had been ready since seven in the morning) the next afternoon, Carsie Hall came and bonded me out. That was seventeen days, almost to the minute, because they brought me in an stole my freedom button at four o'clock. I went home for a week or so.

Sometime
April, 1964

Mr. Arthur Hays Sulzberger
Chairman of the Board
The New York Times
229 West 43rd Street
New York, New York 10036

RE: LOIS CHAFFEE

Dear Sir:

Lois Chaffee is a young woman from Kellogg, Idaho, who has been working for CORE in Mississippi. Prior to that she had been teaching in Tougalou Christian College outside of Jackson.

On the day after Medgar Evers was killed you may recall there were demonstrations in Jackson. Many persons were arrested at this time. Lois Chaffee was one of these although she was not involved in a demonstration. (This is of particular significance.)

At her trial before Judge Russell Moore, one of the most ardent segregationists in Mississippi, she testified as to acts of the police using force in taking flags away from demonstrators.

Judge Moore instructed the City Attorney to submit this to the Grand Jury, apparently on the theory that Jackson Police do not use unnecessary force, and therefore she was committing perjury. (This is interesting in itself because of a Judge who must know that even if a statement is untrue it is not perjury unless it is material to the case on trial. Since she had been charged with disorderly conduct it is difficult to see what bearing the materiality of her statement has on the issue of her disorderly conduct, if any.

The Grand Jury has indcted her for perjury, and she can be sentenced to ten years.

Claude Sitton was a witness to these events; in fact the Times ran at least one story about the overzealousness of the police.

Mr. Harrison Salisbury advised me that he could not permit Mr. Sitton to be a witness or give a statement. This has been confirmed after considerable correspondence with Mr. Goodale.

While one can understand the reluctance of the Times in a matter such as this, there is the overiding consideration that Lois Chaffee may go to jail for ten years for saying something everyone knows essentially to be true. Times reporters are not electronic computers merely taking transcriptions of matters in time and space, unrelated to these events.

Mr. Sitton witnessed an event, he did not just record it. As a citizen he has a moral responsibility, albeit under risk, to state what his eyes and ears saw and heard and registered.

The Times is having similar difficulties. It is in no way a derogation of the position of the Times simply to state the truth, danger though there may be.

Many are risking their personal safety and liberty in these times; the Times more than most should understand that the risk of living in this world must be shared.

Very truly yours,

CR:rrl

Carl Rachlin, Esq.
General Counsel

May [illegible], 1964

Dear Mr. [illegible]:

Your letter of April [illegible] requesting our permission for [illegible] Sitton to testify at the trial of Lois Chaffee has been the subject of [illegible] thought and concern here at The Times. Our decision not to [illegible] Sitton voluntarily to appear as a witness on behalf of Miss [illegible] conflicts with our sympathies; however, in view of the policy considerations and practical aspects involved we feel our decision represents the wise alternative.

Free and impartial reporting requires the journalist to maintain a highly disinterested position with respect to the events he reports. Personal involvement in a trial might compromise his posture of objective impartiality and tend to undermine not only his capacity as a reporter but also the functions of a free press. For these reasons we believe that it is more important for us to retain the freedom to report impartially racial news from the South than to intervene directly in individual cases of injustice.

On the practical side we understand that at least [illegible] other persons, white and Negro, including three F.B.I. agents and [illegible] as local newsmen witnessed the police action described in [illegible] dispatch of June 13, 1963. In our judgment his testimony would not be determinative or of such significance as to outweigh the policy [illegible] involved.

Our decision in this matter has been a hard one. However, we are convinced that the capacity of journalists like Mr. [illegible] to report the news freely and impartially will do more for Miss [illegible] as well as for civil rights and individual justice than any contribution he might make as a witness at a trial of a particular case.

Sincerely yours,

[illegible] Rabkin, Esq.
[illegible] of Racial Equality
[illegible]
[illegible], N. Y. [illegible]

United States District Court
SOUTHERN DISTRICT OF MISSISSIPPI
GULFPORT, MISSISSIPPI

CHAMBERS OF
SIDNEY C. MIZE
DISTRICT JUDGE

May 18, 1964

Honorable Tom H. Watkins
P. O. Box 650
Jackson, Mississippi

Honorable R. Jess Brown
125½ North Farish
Jackson, Mississippi

Honorable Paul O'Dwyer
50 Broad Street
New York 4, New York

Honorable Joe T. Patterson
Attorney General
Jackson, Mississippi

Honorable Carl I. Rachlin
280 Broadway
New York 7, New York

Honorable E. W. Stennett
Barnett Building
Jackson, Mississippi

Honorable Jack Travis
Electric Building
Jackson, Mississippi

In Re: Lois Chaffee v. Paul B. Johnson, et al

Gentlemen:

I have considered the record and your briefs in the above styled case and have reached the conclusion the motion for temporary restraining order should be denied. I think the facts in this case are substantially the same as they were in the Wykoff case and that the plaintiff has a full and complete remedy in the state court, which has not been exhausted. I am enclosing you copy of my opinion.

I will request Mr. Watkins to supply any additional copies to any of his associates other than those shown here.

With kindest regards, I am

Sincerely yours,

S. C. Mize

O'DWYER & BERNSTIEN

50 BROAD STREET
NEW YORK 4

TELEPHONE BOWLING GREEN 9-3939

JUN 12 REC'D

June 11, 1964

COPY

Edward W. Wadsworth, Clerk
United States Court of Appeals
Fifth Circuit
400 Royal Street - Room 408
New Orleans 16, Louisiana

Re: Lois Chaffee vs. Paul R. Johnson,
etc., et al.
Civil Action No. 3535 (J)(M)

Dear Mr. Wadsworth:

Enclosed please find the following:-

1. A motion entitled "Motion For A Stay Pending Appeal and Alternatively for a Writ of Mandamus" in which plaintiff-appellant requests the following relief:

(a) either an order by the Fifth Circuit granting her permission to proceed in forma pauperis or an order requiring the court below to issue such an order or a Writ of Mandamus to the latter effect, and

(b) either issuance of such relief forthwith by the Court on the basis of the papers submitted and the record below or immediate argument, if such be deemed necessary, and

(c) an order temporarily restraining defendants from prosecuting appellant for perjury pending determination by the court of said motion.

2. A motion identically entitled in which the following relief is requested:-

(a) an order or Writ of Mandamus forbidding defendants to prosecute appellant for perjury in the courts of Mississippi until after the court has heard and determined her appeal from the denial below of her motion for an interlocutory injunction against such prosecution,

(b) an order extending appellant's time for taking certain required action in connection with said appeal until after the Court has heard and determined appellant's appeal-by-motion from the order below denying her permission to proceed *in forma pauperis*, and

(c) either immediate issuance of such orders without argument or immediate argument thereon, if such be deemed necessary.

3. Affidavits showing that both motions have been served by mail upon counsel for the defendants herein.

As the motion papers indicate, this action is at a stand-still and cannot proceed until the Fifth Circuit determines whether or not appellant is entitled to proceed *in forma pauperis*, that is, until motion (1) above is *decided*. Once that is decided, we will be in a position to know whether or not hearing transcripts and other items of record can be obtained and the appeal from the denial below of an interlocutory injunction completed. A stay of the state perjury prosecution below pending the interlocutory appeals herein is necessary to prevent appellant's claim to a permanent injunction forbidding a trial from becoming moot.

If a stay of the state prosecution pending the hearing and determination of the two interlocutory appeals is granted forthwith and without argument, then there will be no need for any immediate hearings before the Fifth

Circuit and the appeals can proceed as they normally would with the *in forma pauperis* question either argued and decided first or argued together with the other appeal. If it is argued separately, the question of whether Judge Mize erred below in denying appellant's motion for permission to proceed *in forma pauperis* can probably be argued almost immediately, since the question is relatively simple and will involve, at most, a very small record. The question of whether or not Judge Mize erred in denying appellant's motion for an interlocutory injunction is much more complicated and will require considerable time to brief properly.

If the Court feels that there should be argument on the question of whether or not a stay order pending appeal should issue, then it would probably be expedient to have the *in forma pauperis* question argued at the same time, provided counsel for the defendants is amenable to such a suggestion.

In any event an immediate determination with respect to the issuance of a stay order pending appeal is absolutely imperative, for if such an order is not granted immediately, a date for appellant's perjury trial will be set, the most important aspect of this action will be in danger of becoming moot, and counsel for appellant will have both this action and a state perjury trial to prepare for simultaneously.

Either my associate in this case, Mr. Carl Racklin, or I will call you within the next few days to discuss how these motions can be handled. I would very much appreciate whatever suggestions you may have about the handling of these matters, as I have never before had a problem quite like this.

I would like to thank you in advance for whatever assistance you may be able to offer me and to apologize to the court for the inconvenience resulting from these motions.

Sincerely,

PO'D/jk

June 17, 1964

Miss Nanette Sachs
23 Garden Place
Brooklyn 1, New York

RE: Lois Chaffee

Dear Nanette:

As I have previously advised you orally, the Lois Chaffee case is completely a civil rights matter in all its aspects, both in the Federal and the state courts.

We are convinced that her charge of perjury is based solely on the fact that she had the audacity to state in open court that she saw acts of brutality by the Jackson police, a fact that was well publicized in newspapers all over the country.

We trust that the S.E.D.F. will undertake the burden of the expenses incurred.

Cordially,

CARL RACHLIN

CR/hs

CARL: NOTE FROM HOWARD MEYER, BO9-3939
June 29, 1964, 10:15 a.m.

In the case of Lois Chaffee, on June 23rd the Fifth Circuit granted a stay on condition tht within 15 days briefs in typewritten form by served and filed in support of Chaffee's appeal from the order denying leave to appeal *in forma pauperis* and in support of her application for stay pending appeal.

The foregoing was received by Mr. O'Dywer last week. He has tried to contact Brad Brewer ~~you~~ WHO is apparently on vacation.

I am unable to handle this myself, as I am leaving town this week.

It is urgent that you speak to me (OR PAUL) today, and if I am not in, be sure to leave a time, place and telephone number where I can reach you.

Howard

Will be in his office after 4 pm

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

SEP 21 1964

September 18, 1964

Mr. R. Jess Brown
Attorney at law
125½ N. Farish Street
Jackson, Miss.

Mr. Will S. Wells
Assistant Attorney General of Mississippi
P. O. Box 220
Jackson, Miss.

Mr. Paul O'Dwyer
Attorney at law
50 Broad Street
New York 4, N. Y.

Mr. E. W. Stennett
Attorney at law
P. O. Box 17
Jackson, Miss.

Mr. Carl Rachlin
Attorney at law
38 Park Row
New York, N. Y.

Mr. Thomas H. Watkins
Attorney at law
800 Plaza Bldg. - P. O. Box 650
Jackson, Miss.

Re: No. 21638 - LOIS CHAFFEE versus PAUL B. JOHNSON, JR., ETC., ET AL.

Gentlemen:

Find enclosed copy of order this date entered by the Court in the referenced case, which order is self explanatory.

By copy of this letter, I am this day returning to the Clerk os the U. S. District Court, at Jackson, Mississippi, the original papers forwarded to this Court with her letter of June 12, 1964, in order that the record on appeal may be prepared and forwarded for filing in accordance with said order.

Yours truly,

E. W. Wadsworth
EDWARD W. WADSWORTH,
Clerk.

crj
Enc.

CC Clerk, U. S. District Court
Jackson, Mississippi - with certified copy order and original papers.

Chaffee

O'DWYER & BERNSTIEN

50 BROAD STREET
NEW YORK 4

TELEPHONE BOWLING GREEN 9-3939

November 23, 1964

COPY

Honorable John H. Fox, III
Assistant District Attorney
P. O. Box 1261
Jackson, Mississippi

Re: State of Mississippi vs.
Lois Chaffee
Cause No. 17-908

Dear Mr. Fox:

I have before me a copy of Mr. Watkins' letter to you of November 9, 1964, together with the enclosures which accompanied it.

In view of its contents, I would like to know whether or not Miss Chaffee's case will be called on the first Monday of January 1965 as indicated in your letter to me of November 5, 1964.

Sincerely,

PO'D/jk

cc: Thomas H. Watkins
Hon. Will S. Wells
Hon. E. W. Stennett

From the desk of

PAUL O'DWYER

November 8, 1965

Hon. Paul O'Dwyer
Councilman At Large
50 Broad Street
New York, New York 10004

Dear Paul:

May I take this opportunity to thank you for what you have done in the Lois Chaffee case, both now and in the past, and presumably, in the future, but also for all the other things you have done for CORE. I do not know what I would have done if you had not assumed so much responsibility in a difficult case such as this.

As to your specific suggestion with regard to bail, I will get in touch with Al Bronstein who is the Lawyers Constitutional Defense Committee lawyer in Jackson, and a very competent man. He and Jess can talk it over and decide how to go about it. It would be very helpful.

By the way, you may be interested to know that the Senate has passed a very fair bill on bail, but the House has not yet acted. Hopefully, it will, in the very near future. I have been pushing Frank Hogan on bail problems in New York County because of the position that his office has been taking which, in my view, is not only unfair, but possibly unconstitutional.

For some time we have been planning to make a wholesale attack on the conception of bail, particularly in lesser crimes and we are planning to make this wholesale attack very soon.

With kindest regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

PAUL O'DWYER

Councilman
at Large
50 Broad St.
N.Y. 10004

NOV 5 1965

Dear Carl

Don't you think we should try to reduce the bail on Lois Chaffee.

P.O'D.

Chaffee

CARL RACHLIN
ATTORNEY AT LAW

165 WEST 46TH STREET, NEW YORK, N. Y. 10036
212 LT 1-8700

February 3, 1966

Bradley R. Brewer, Esq.
Wickes, Riddell
1 Chase Manhattan Plaza

Dear Brad:

a) Your petition I think is of very high quality

b) This may shock you -- I don't think it is too long.

c) It does need, in my view, a little jazzing up. For example, at some point in order to start selling the court on the merits of the case very early I would like something like the following paragraph (exact words not important):

> "Numerous newspapers throughout the United States, in writing of this event give substantive eye-witness support to her statement. At the time she gave this testimony she was testifying at her own trial for breach of the peace (at present on appeal, and while not part of this petition, is no less improper) it would seem rather obvious to anyone, particularly a judge, that observations of Miss Chaffee, true or false, as towhat the police were doing to other persons, were irrelevant as to whether she committed a breach of peace. If irrelevant, no grounds exist to convict her for perjury, even if what she said were false, which it is not. At no time was counsel permitted to show the die-hard absolute segregationist views of Judge Moore; Counsel was not permitted to show he was in large part responsible for the infamous "go to jail" petition which would have pledged that employees of the State of Mississippi go to jail rather than obey federal court orders in the well-known James Meridith situation. Nor were we allowed to show Judge Moore's connection with the White Citizens' Council. Had we been allowed to show these views of Judge Moore, and the other defendants, the reasons for their desire to prosecute a white civil-rights

worker from Kellogg, Idaho who had moved to Mississippi to help Negroes achieve equality would have become so readily apparent. By now it is well-known that the feeling against the white civil-rights worker is well known."

d) Some of the points seem to be able to be merged. I think we ought to do this if possible.

e) I do not think that we hit hard enough,early enough that under the Mississippi Constitution based upon the testimony she gave a court would have to reverse the conviction for perjury on the grounds that the issue is not material.

f) We do not hit hard enough at Russell Moore. I would like to indicate if possible, from one or two of the questions that Moore was not allowed to answer, something of the vindictive nature of this man.

g) I think we ought in the same vein as (f) indicate the kind of evidence we were not allowed to prove by Judge Mize.

In other words, I am indulging in my favorite indulgence, that is, trying to persuade the court on the first or second page that they ought to take the case and then hopefully, tell them how to do it.

Let us have a meeting soon, with you and whomever is with you on this to get it in final shape.

Sincerely,

CR/cs

CARL RACHLIN

Chaffee

February 4, 1966

Bradley R. Brewer, Esq.
Wickes, Riddell — —
1 Chase Manhattan Plaza
New York, New York

Dear Brad:

I have your proposed application to Judge Black on the Chaffee case extension of time. It is my understanding that these matters receive almost automatically, an extension the first time it is asked for.

In that sense, of course, there is no doubt this affidavit sets forth in detail what the case is about. Unhappily, what it does not do, and I think that is to be spelled out in greater detail than it is spelled out, is show why we want the time. I am not sure that we can blame everything on the transit strike. Perhaps we ought to add that all the people involved are volunteers and when this is combined with persons trying to catch up with their private activities because of the long delay an appropriate reason is set forth for granting an extension. We had no trouble recently, getting an extension for Pierson v. Ray for 30 days.

I think we have to be just a little more careful in setting forth the issues since this is one of the matters about which Judge Black may not be too enthusiastic. In setting forth the issues perhaps we ought to phrase them in terms of the fact that this case can further delineate the areas in which the federal court has the right to stay the prosecution of state criminal proceedings. It must not look,

Cont'd...

even in this affidavit, as though we are really trying to supplant state criminal proceedings with a federal criminal proceeding.

I alsomsuggest a paragraph between the second and third paragraphs of the affidavit setting forth a few of the horrendous facts so that we may hopefully warm the blood of the court even at this early stage.

I have not given a line by line analysis which I think should be saved for the actual petition when we start working more closely on that.

With best personal regards,

Sincerely,

CR/cs

CARL RACHLIN

DRAFT-BRB
2/1/66

- - - - - - - - - - - - - - - - - - - -X
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[CIRCUIT COURT CAPTION]
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APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

To the Honorable Hugo L. Black, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Fifth Circuit:

Lois Chaffee, Petitioner, hereby respectfully applies for an extension of time within which to apply for a writ of certiorari in the above-entitled cause from February 10, 1966, to and including April 11, 1966.

The decision sought to be reviewed is that of the Court of Appeals for the Fifth Circuit, affirming the decision below of the District Court for the Southern District of Mississippi. The District Court decision denied Petitioner's motion for a temporary injunction against the state perjury prosecution which Petitioner seeks in this proceeding to have permanently enjoined under the Civil Rights Act. The judgment of the Court of Appeals was entered November 12, 1965. The time for filing a petition for a writ of certiorari expires on February 10, 1966. The jurisdiction of this Court rests upon 28 U.S.C. § 1254.

This case involves the denial of a temporary injunction suspending a perjury prosecution commenced by the State of Mississippi against Petitioner based upon testimony which she gave at her own trial for disturbing the peace and which concerned the use of billyclubs by Jackson, Mississippi, policemen during the arrest of certain civil rights demonstrators on June 13, 1963. Petitioner moved for a stay of the state perjury prosecution pending federal court adjudication of her action for a permanent injunction against the prosecution under theCivil Rights Act (Rev. Stat. § 1929; 42 U.S.C. § 1983; and related statutes).

¶ Petitioner's action is based upon the following contentions, among others: (1) the instant indictment is invalid on its face under the Fourteenth, Fifth and Sixth Amendments because it does not show the materiality of the quoted and allegedly perjured statements to the trial at which they were made; (2) the instant indictment is constitutionally defective and invalid because women were systematically and completely excluded from selection for the grand jury which indicted Petitioner by operation of a Mississippi statute that makes women ineligible for service upon state juries (Miss. Code of 1942, § 1762); (3) the prosecution was commenced under a state statute (Miss. Code, § 2479) which is unconstitutionally vague and which sets up procedures which violate due process by making the trial judge both prosecutor and judge for purposes of initiating and finding probable cause for a perjury prosecution; (4) the instant prosecution was commenced without probabl~~y~~e cause and for the improper purposes of punishing Petitioner for her activities as a civil rights worker, of suppressing civil activity, and of suppressing criticism of local police behavior toward civil rights demonstrators; (5) the prosecution has no substantial likelihood of leading to a valid conviction; and (6) if a state perjury trial is held irreparable injury will be done, regardless of its outcome, to freedom of speech and to the judicial process in Mississippi federal and state courts, for witnesses, who are already extremely reluctant, will become completely unwilling to testify on behalf of civil rights demonstrators for fear that a perjury prosecution may be commenced against them.

The primary issues are (a) whether the decision below conflicts with the holding of this Court in Dombrowski v. Pfister, 380 U.S. 479 (1965), (b) whether the Civil Rights Act (42 U.S.C. § 1983) constitutes a statutory exception to 28 U.S.C. §2283, (c) whether an indictment against a woman is valid under the Fourteenth Amendment even though it was returned by a grand jury from which women were completely excluded by operation of a state statute, and (d) whether the rule established in Russell v. United States, 369 U.S. 749 (1962), for federal indictments applies through the Fourteenth Amendment to state indictments as well. Although the Fifth Circuit did not discuss or even cite Dombrowski in its opinion below[1], its ruling must of necessity be regarded as based upon the conclusion that denial of a temporary injunction in this case does no violence to the Dombrowski holding. Since the prosecution involved here will inevitably have "chilling effects" upon freedom of expression and upon access to testimony in Mississippi courts, the decision below would seem to run directly in the face of Dombrowski. At the very least, this case raises extremely important questions about what Dombrowski means on the subject of temporary injunctions under theCivil Rights Act against state prosecutions. (See "The Supreme Court, 1964 Term," 79 Harv. L. Rev. 105, 170-174 (1965); Brewer, "Dombrowski v. Pfister: Federal Injunctions against State Prosecutions in Civil Rights Cases - A New Trend in Federal-State Judicial Relations," 34 Fordham L. Rev. 71 (1965).) Because the present federal action was begun after the state indictment was returned, this case presents ~~a~~ further questions not decided in Dombrowski: Does 42 U.S.C. § 1983 constitute a statutory exception to 28 U.S.C. § 2283? Does (a) the return of an indictment or (b) the beginning of trial mark the commencement of "proceedings in a state court" within the meaning of 28 U.S.C § 2283? The importance of these questions is demonstrated by reference to Cameron v. Johnson, 381 U.S. 741 (1965), in which this Court remanded the case to the district court where the present case arose for a ruling on the apparent conflict between sections 1983 and 2283. The dissenting opinions in Cameron state quite accurately and well the importance of this question and of an early ruling on the implications of Dombrowski.

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[1] The briefs in chief were submitted before Dombrowski was decided, but it was brought to the court's attention in Petitioner's Reply Brief.

The recent transit strike and blizzard weather conditions in New York City have seriously hampered the activities of Petitioner's counsel and made this request Since for an extension necessary. In addition, a ruling is expected shortly from a three-judge district court in Alabama on the question of the constitutional validity of completely excluding women from jury service. (Gardenia White et al, Plaintiff, United States, Intervenor-Plaintiff v. Bruce Cook, et al., Defendants, 2263-N, Middle Dist. Ala., No Div.) This decision will be highly relevant to the preparation of the petition herein.

WHEREFORE, it is respectfully requested that the time within which to petition for a writ of certiorari in the above-entitled case be extended to and including April 11, 1966.

Dated: February , 1966

Paul O'Dwyer
Counsel for Petitioner

O'DWYER & BERNSTIEN

50 BROAD STREET
NEW YORK 4

TELEPHONE BOWLING GREEN 9-3939

February 7, 1966

COPY

Watkins & Eager, Esqs.
800 Bankers Trust Plaza Building
Jackson, Mississippi 39205

Att: Thomas H. Watkins, Esq.

Re: State of Mississippi v.
Lois Chaffee
Cause No. 17-908

Dear Sir:

I received today a copy of your letter to Hon. John H. Fox, III, dated February 3, 1966. Please be advised of our intention to petition for a writ of certiorari to reverse the Circuit Court decision. The Clerk of the Fifth Circuit has been directed to prepare and certify a record. The time for filing a petition for the writ expires on February 10, 1966. Before that time we will make application for an extension of time within which to file the petition.

As I read your letter, I understand that you have no desire to interfere with Appellate procedures in this federal action. I assume, therefore, that you will take appropriate action in connection with your letter to Mr. Fox.

Sincerely,

Paul O'Dwyer

PO'D/jk
cc: Hon. John H. Fox, III
Hon. E. W. Stennett
Hon. Will S. Wells
Hon. Carl Rachlin

POST OFFICE BOX 1261

O'DWYER & BERNSTIEN

50 BROAD STREET
NEW YORK 4

TELEPHONE BOWLING GREEN 9-3939

February 10, 1966

COPY

Watkins & Eager, Esqs.
800 Bankers Trust Plaza Building
Jackson, Mississippi 39205

Attention: Thomas H. Watkins, Esq.

Re: Chaffee v. Johnson
No. 21638

Dear Sir:

Please refer to my letter to you dated February 7, 1966. Enclosed is a copy of a letter which I received today from Hon. John H. Fox, III, also dated February 7, 1966. As I indicated in my earlier letter, I assume that no action will be taken on this prosecution while proceedings are pending before the Supreme Court. I assume, therefore, that the case will not be called as indicated in Mr. Fox's letter. If this assumption is incorrect, please wire or telephone me immediately.

Sincerely,

PO'D/jk

OFFICE OF
DISTRICT ATTORNEY
SEVENTH CIRCUIT COURT DISTRICT
910 MILNER BUILDING
JACKSON, MISSISSIPPI

BILL WALLER
DISTRICT ATTORNEY
JOHN H. FOX, III
ASSISTANT DISTRICT ATTORNEY

POST OFFICE BOX 1261
TELEPHONE
948-4848

COUNTIES OF
HINDS
MADISON
YAZOO

February 7, 1966

Honorable Paul O'Dwyer
O'Dwyer and Bernstein
50 Broad Street
New York 4, New York

RE: State of Mississippi
vs.
Lois Chaffee
Cause No. 17-908

Dear Mr. O'Dwyer:

The matter of the State of Mississippi vs. Lois Chaffee is set for call on the first Monday in March, 1966, in the Circuit Court of the First Judicial District of Hinds County, Mississippi. We have been requested by the Court to advise you of this setting so that you may make your plans accordingly.

We look forward to seeing and/or hearing from you in this connection.

Very truly yours,

John H. Fox

JOHN H. FOX, III
ASSISTANT DISTRICT ATTORNEY

JHF:jj

O'DWYER & BERNSTIEN

PAUL O'DWYER
OSCAR BERNSTIEN

LEON HERSHBAUM
W. BERNARD RICHLAND
HOWARD N. MEYER
FRANK DURKAN
JOHN BYRNE
JEANNETTE E. PERRY

50 BROAD STREET
NEW YORK 4

TELEPHONE BOWLING GREEN 9-3939

MAR 25 1966

March 24, 1966

Carl Rachlin, Esq.
38 Park Row
New York, New York

Re: Chaffee v. Johnson, et al.
No. 1400 Misc.
October Term 1965

Dear Mr. Rachlin:

Enclosed please find form of notification mailed this date to Mr. Thomas H. Watkins.

Very truly yours,

Judith Katz

Judith Katz
Secretaryto Paul O'Dwyer

JK/ss
Encs.

Supreme Court of the United States

OCTOBER TERM, 1965

LOIS CHAFFEE,
Petitioner,

vs.

PAUL B. JOHNSON, JR., et al.,
Respondents.

No. 1400 Misc.
October Term 1965

To HON. THOMAS H. WATKINS, *Counsel for Respondent*:

YOU ARE HEREBY NOTIFIED that the petition for writ of certiorari in the above-entitled and numbered case was filed in the Supreme Court of the United States on the 12th day of March, 1966.

The record filed pursuant to the requirement of Rule 21 (1) consists of:

the record in the Court of Appeals as certified by the clerk thereof pursuant to the procedure for in forma pauperis appeals. As you know, the essential elements consist of: (1) the complaint, (2) all answers, (3) petitioner's motion papers in the district court, (4) respondents' papers in opposition, (5) transcript of the hearing before the district court, (6) Judge Mize's opinion and related letters, (7) petitioner's notice of appeal, (8) designations of record and documents indicated therein, and (9) the decision of the Court of Appeals. There is only one copy of the record, and I did not make a list of its contents.

(If the record was printed for the use of the court below, state here whether you have or have not filed nine copies as permitted by Rule 21 (4).)

Counsel for Petitioner.

Form 75

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

Chaffee

JUL 18 1966

July 12, 1966

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N.Y.

Dear Carl --

Enclosed find copies of papers I have filed in State v. Lois Chaffee and of original complaint in "draft" action. Plaintiff not inducted. Now we don't file habeas. Will not send copy.

Best,

Mac

Revisions as of 7/14/66.

Malcolm Farmer III

MF:g
Encl.

Dear Carl - I spoke to Paul O'Dwyer to-day. (7/14/66) He knows about 7/27/66 + 8/1/66 dates, as well as Waller's offer, which I advised him to disrespectfully decline.

We investigated Continental Can Co - Jonesboro today - will follow up with EEOC, also a plywood plant there with NLRA election violations. Dept. Labor hot on Local #831 (Monroe) election and Dick Andrews may try to integrate the manufacturing plant at Olin - then a new complaint with EEOC + a lawsuit.

Mac

NATIONAL OFFICE: 156 FIFTH AVE., NEW YORK 10010 • (212) YU 9-7530 • CONTRIBUTIONS TO LCDC ARE TAX-DEDUCTIBLE

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

August 29, 1966

Carl Rachlin, Esq.
Room 1802
150 Nassau Street
New York, New York

Re: State v. Lois Chaffee

Dear Carl:

Please find copy of order signed by Judge McGowan and of two bonds which I obtained from Hinds County Circuit Court today. Please note the two thousand dollar ($2,000.00) bond. The order does not cover it, but I noticed and requested that the sheriff give it to me, which he did. The question remains whether there is two thousand dollars ($2,000.00) in cash on deposit here. If so, you'd better let me know and I'll try to get it back. I have kept the original of this bond. The sheriff's deputy claimed no knowledge of whether cash had been deposited. I have mailed copies of the bonds to Paul O'Dwyer in the event he might know whether it represents unreturned cash.

Best,

Mac

Malcolm Farmer III

Encl.th
MF/em
cc: P. O'Dwyer

September 1 1966

Malcolm Farmer III, Esq.
Lawyers Constitutional Defense Committee
603 North Farish Street
Jackson, Mississippi 39202

Re: State v. Lois Chaffee

Dear Mac:

I have your letter of the 29th which included two appearance bonds, one dated October 15th, 1963 in the amount of $2,000.00 and the other dated December 23rd, 1963 in the amount of $5,000.00. At this moment, I honestly do not recall who put up the $2,000.00 which released her in October. I know more about the $5,000.00 which you and I have previously discussed which as you can see, involved the Yorkshire Insurance Company of New York. It is important that you do check and see whether there is any overlapping between the $2,000.00 and the $5,000.00 bond. It is possible that the $2,000.00 was used to support obtaining the $5,000.00 bond but I am not certain at this point. My memory fails me and I don't know who would know. On the other hand, it is also posiible that the money was put up independently from local sources and we ought to find this out if possible. I am certain that Paul O'Dwyer would not know the answers to these questions either since I did not speak to him until some time after she was released on the $5,000.00 bond. My memory tells me that we obtained the $5,000.00 bond when she was indicted by the grand jury.

In any event, let me thank you for all that you have done in this matter. We really appreciate it very, very much.

With warm regards.

Sincerely,

Carl Rachlin

CR/tp
cc: Paul O'Dwyer

SEP 13 1966

O'DWYER & BERNSTIEN

PAUL O'DWYER
OSCAR BERNSTIEN

LEON HERSHBAUM
W. BERNARD RICHLAND
HOWARD N. MEYER
FRANK DURKAN
JOHN BYRNE
JEANNETTE E. PERRY

50 BROAD STREET
NEW YORK 4
TELEPHONE BOWLING GREEN 9-3939

September 12, 1966

Carl Rachlin, Esq.
165 West 46th Street
New York, New York

Dear Carl:

I spoke to Lois Chaffee about that $2,000. She remembers that it was put up, but doesn't remember who did it.

Yours sincerely,

Paul O'Dwyer

PO'D/jm
Encls.

APPEARANCE BOND

STATE OF MISSISSIPPI }
COUNTY OF HINDS }

We, Lois Chaffee, Principal and THE YORKSHIRE INSURANCE COMPANY OF NEW YORK and ______, Sureties agree and bind ourselves to pay unto the State of Mississippi Five Thousand Dollars ($ 5,000.00) unless the said Lois Chaffee shall appear before the Circuit Court of Hinds County, at the next term thereof held at the Courthouse in the First Judicial District of said County in the City of Jackson, on the 6th day of January, 19 64 to answer a charge of Perjury ______ and then and there remain from day to day and term to term, until discharged by law, said charge being by Indictment

Witness our signatures this the 23rd day of December, A. D., 19 63

Principal Lois Chaffee Address 1017 Lynch St. Jackson

Surety ______ Address ______

Surety THE YORKSHIRE INSURANCE COMPANY OF NEW YORK Address 80 Maiden Lane,
New York, N. Y. 10038

By ______
Carroll R. Young, Vice President

Resident Mississippi Agent

SURETIES OATH

STATE OF MISSISSIPPI }
COUNTY OF HINDS }

Personally appeared before me ______

______ of said County

and ______ and ______

Sureties on the within bond, who each being duly sworn, state on oath, that they are worth, in property in Hinds County, subject to execution at law, over and above all indebtedness and exemptions the amount of this bond.

______ Surety

______ Surety

______ Surety

Sworn to and subscribed before me, this the ______ day of ______, 19 ___

______

______

APPROVED, this 27 day of December, 19 6

Attorney ______

Phone ______

J. R. GILFOY, Sheriff, Hinds County, Miss.

By ______ Deputy

(NOTARIAL ACKNOWLEDGMENT)

INDIVIDUAL ACKNOWLEDGMENT

State of ______________________ }
County of ______________________ } ss.:

On this ______________ day of ______________, in the year 19____, before me personally came ______________________________, to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same.

____

PARTNERSHIP ACKNOWLEDGMENT

State of ______________________ }
County of ______________________ } ss.:

On this ______________ day of ______________, in the year 19____, before me personally came ______________________________, a member of the copartnership of ______________________________, to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged to me that he executed the same as and for the act and deed of the said copartnership.

____

CORPORATE ACKNOWLEDGMENT

State of NEW YORK }
County of NEW YORK } ss.:

On this 23rd day of DECEMBER, in the year 1963, before me personally came CARROLL R. YOUNG, to me known, who, being by me duly sworn, did depose and say that he resides in BERKELEY HEIGHTS, NEW JERSEY; that he is the VICE PRESIDENT & ATTORNEY of the THE YORKSHIRE INSURANCE COMPANY OF NEW YORK the corporation described in and which executed the foregoing instrument; that he knows the corporate seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; and that it was so affixed by order of the Board of Directors of the said corporation, and that he signed ths name thereto by like order.

Helen Palotto

HELEN PALOTTO
Notary Public, State of New York
No. 03-8253765
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires March 30, 1965

Bond 843A

Printed in U.S.A.

THE YORKSHIRE INSURANCE COMPANY
OF NEW YORK

GENERAL POWER OF ATTORNEY

Know all men by these Presents, That THE YORKSHIRE INSURANCE COMPANY OF NEW YORK has made, constituted, and appointed, and by these presents does make, constitute, and appoint

Carroll R. Young of New York, New York

its true and lawful attorney, for it and in its name, place and stead to execute on behalf of the said Company, as surety, bonds, undertakings and contracts of suretyship to be given to

all obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of Unlimited

Dollars.

This Power of Attorney is granted and is signed and sealed by the authority of the following Resolution adopted by the Board of Directors of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK at a meeting duly called and held on the 18th day of May, 1961:

"RESOLVED, that the Chairman of the Board, the Vice Chairman of the Board, the President, an Executive Vice President or any Vice President of the Company, be, and that each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK, bonds, undertakings and all contracts of suretyship; and that any Secretary or any Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company."

In Witness Whereof, THE YORKSHIRE INSURANCE COMPANY OF NEW YORK has caused its official seal to be hereunto affixed, and these presents to be signed by the Chairman of the Board and attested by one of its Secretaries this 31stday of December 1962.

THE YORKSHIRE INSURANCE COMPANY OF NEW YORK
By

Attest

F. J. Miller
Secretary

Chairman of the Board

STATE OF NEW YORK,
ss.:
COUNTY OF NEW YORK,

On this 31stday of December, 1962, before me personally came J. V. Herd, to me known, who being by me duly sworn, did depose and say that he resides in Brooklyn, N. Y. in the County of Kings, State of New York, at 2 Montague Terrace; that he is Chairman of the Board of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK, the corporation described in and which executed the above instrument; that he knows the seal of the said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Notary Public

[illegible]
Notary Public, State of New York
No. [illegible]
Qualified in [illegible] County
Certificate [illegible] County
Commission Expires March 30, [illegible]

CERTIFICATE

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

I, the undersigned, a Secretary of THE YORKSHIRE INSURANCE COMPANY OF NEW YORK, a New York corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore that the Resolution of the Board of Directors, set forth in the said Power of Attorney, is now in force.

Signed and sealed at the City of New York. Dated the 23rd day of December, 1963.

F. J. Miller
Secretary

JUSTIFICATION

The Yorkshire Insurance Company of New York

FINANCIAL STATEMENT AS OF DECEMBER 31, 1962

ASSETS	
Cash	$ 629,934
*Bonds and Stocks	16,522,912
Interest, Dividends and Rents Accrued	79,186
Agents' Balances Receivable	1,317,911
Other Assets	445,158
Total Admitted Assets	$18,995,101

**Includes Securities Deposited as Required by Law* *$1,183,340*

LIABILITIES, CAPITAL & SURPLUS	
Reserve for Unearned Premiums	$ 6,659,894
Reserve for Losses	5,864,228
Reserve for Taxes and Expenses	282,199
Reserve for Other Liabilities	345,686
Total Liabilities	13,152,007
Capital	1,500,000
Contingency Reserve	500,000
Surplus	3,843,094
Policyholders' Surplus	5,843,094
Total Liabilities, Capital & Surplus	$18,995,101
Policyholders' Surplus—Market Basis	*$6,434,246*

At the regular meeting of the Board of Directors of The Yorkshire Insurance Company of New York on the 29th day of November 1962, a quorum being present the following resolution was unanimously adopted:

RESOLVED, That each of the following persons, to wit: J. V. Herd, Chairman of the Board; N. Dekker, Vice Chairman of the Board; Nathan H. Wentworth, President; T. E. O'Brien, E. J. Ryan, Walter D. Sheldon and Carroll R. Young, each a Vice President; Edward M. Bersano, A. J. Miller, James Strain and M. J. Tanz, each a Secretary; William A. Bannon, Jr., Arthur C. Borgeson, Robert B. Budelman, James F. Burns, Arthur T. Clayton, Eugene P. Dougherty, P. L. Douglass, H. J. Hermann, Eugene F. Hession, James M. Keane, Clarence H. Kenyon, Joseph S. Lynch, John E. Maher, Joseph B. Mettalia, Robert L. Overland, F. T. Paterson, Harold J. Pottinger, Ethel E. Punger, M. E. Raesecke, Joseph C. Reiners, Charles J. Riffelmacher, Randolph Rostin, Robert W. Schmitt, Daniel J. Sullivan, Floyd Sykes, Joseph J. Thomas, J. C. W. Thompson, E. E. Wells, W. R. Wells, William J. White and Arline M. Witbeck, each as an attorney, is hereby authorized to execute on behalf of The Yorkshire Insurance Company of New York bonds, undertakings and contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, and to attest the corporate seal of the company to any and all bonds, undertakings and contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, signed by any of the said persons, provided—

1. That the authority herein granted to Arthur C. Borgeson, Robert B. Budelman, P. L. Douglass, Eugene F. Hession, James M. Keane, F. T. Paterson, Joseph C. Reiners, Daniel J. Sullivan, J. C. W. Thompson, William J. White and Arline M. Witbeck, shall be limited to bonds, undertakings or contracts of suretyship of not more than one million dollars, unless the said bonds, undertakings or contracts of suretyship, including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, shall also be signed by the Chairman, the Vice Chairman, the President, one of the Vice Presidents or one of the Secretaries named above.

2. That the authority herein granted to H. J. Hermann, Joseph S. Lynch, John E. Maher, Randolph Rostin, Floyd Sykes and W. R. Wells, shall be limited to bonds, undertakings or contracts of suretyship of not more than five hundred thousand dollars, unless the said bonds, undertakings or contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, shall also be signed by the Chairman, the Vice Chairman, the President, one of the Vice Presidents or one of the Secretaries named above.

3. That the authority herein granted to William A. Bannon, Jr., James F. Burns, Clarence H. Kenyon, Robert L. Overland, Ethel E. Punger, M. E. Raesecke and Charles J. Riffelmacher, shall be limited to bonds, undertakings and contracts of suretyship of not more than one hundred thousand dollars, unless the said bonds, undertakings or contracts of suretyship; including agreements of co-suretyship, reinsurance and any and all modifications, stipulations and consents of surety concerned therewith, shall also be signed by the Chairman, the Vice Chairman, the President, one of the Vice Presidents or one of the Secretaries named above.

4. That the authority herein granted shall be effective January 1, 1963 and shall expire December 31, 1963.

RESOLVED, further, that the appointment of each of the persons named herein to his or her respective office or position is hereby confirmed and that the said appointees be, and each of them is, authorized and empowered to certify under seal, a copy of the foregoing resolution.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:
CITY OF NEW YORK

A. J. MILLER, to me known, being by me duly sworn, deposes and says that the affiant resides in GLEN RIDGE, NEW JERSEY

that the affiant is an SECRETARY of The Yorkshire Insurance Company of New York, the corporation which is described in and which executed the annexed instrument; that the affiant knows the corporate seal of said corporation; that the seal affixed to the annexed instrument is the corporate seal of The Yorkshire Insurance Company of New York, and was thereto affixed by order and authority of the Board of Directors of the said company; ~~and that the affiant signed the affiant's name thereto by like order and authority of the company~~. The affiant further deposes and says that the foregoing financial statement of The Yorkshire Insurance Company of New York, to the best of the affiant's knowledge and belief is a full, true and correct statement of the financial condition of the said company on the 31st day of December, 1962, and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by law; and that the said company has received from the Superintendent of Insurance of the State of New York a certificate of solvency and of its sufficiency as surety, or guarantor, pursuant to the Insurance Law of the State of New York and the Acts amendatory thereof and supplemental thereto, and that such certificate has not been revoked. The affiant deposes and says that the affiant has compared the foregoing resolution of the Board of Directors of the said company with the original thereof, as recorded in the minute book of the said company, and does hereby certify that the same is a true and correct transcript therefrom, and of the whole of the said resolution, and the same is now in full force, and that the seal affixed hereto is the corporate seal of the said company.

Subscribed and sworn to before me

this 23rd day of DECEMBER, 1963.

A. J. Miller
A. J. MILLER, SECRETARY

Ralph F. Meade

RALPH F. MEADE
Notary Public, State of New York
No. 30-7877650 Qualified in Nassau County
Cert. filed in New York County

31 Bond. 1100
PRINTED IN U.S.A.

BOND OF

The Yorkshire Insurance Company of New York

80 Maiden Lane
New York City

I approve the bond attached and the sufficiency of the Surety.

Dated: ....

APPEARANCE BOND

STATE OF MISSISSIPPI
COUNTY OF HINDS

We, Lois C. Chaffee, Principal and ______

and ______, Sureties agree and bind ourselves to pay unto the State of Mississippi in the penal sum of $2,000.00 Dollars ($ 2,000.00) unless the said Lois C. Chaffee shall appear before the Circuit Court of Hinds County, at the next term thereof held at the Courthouse in the First Judicial District of said County in the City of Jackson, on the 4th day of November, 19 63 to answer a charge of Perjury ______ and then and there remain from day to day and term to term, until discharged by law, said charge being by ______

Witness our signatures this the 15th day of October, A. D., 19 63.

Principal Lois Chaffee Address 306 Ivey St. [illegible]

Surety ______ Address ______

Surety ______ Address ______

SURETIES OATH

STATE OF MISSISSIPPI
COUNTY OF HINDS

Personally appeared before me ______

______ of said County ______

and ______ and ______

Sureties on the within bond, who each being duly sworn, state on oath, that they are worth, in property in Hinds County, subject to execution at law, over and above all indebtedness and exemptions the amount of this bond.

______ Surety

______ Surety

______ Surety

Sworn to and subscribed before me, this the ______ day of ______, 19 ___

______

______

APPROVED, this 15th day of October, 19 ___

Attorney ______

Phone ______

J. R. GILFOY, Sheriff, Hinds County, Miss.

By ______ Deputy

November 17, 1966

Mr. Floyd McKissick
National Director
CORE
200 West 135th Street
New York, New York

Dear Floyd:

Enclosed is the SEDF check for $4,300. This is calculated as follows. $4,800 was returned from the insurance company of the total amount placed on deposit with them by National Council of Churches on our behalf. $500 was deducted from the $4,800, since this was the fine that was paid by Lois Chaffee in settlement of the entire matter, serious charges of perjury, etc. having been withdrawn as part of the arrangement. Lois and Paul O'Dwyer, our attorney, worked this out and I know Lois is satisfied. No deduction is being made for the $160 paid to transport Lois to and from Jackson, which was necessary to effectuate the settlement.

It is possible there may be $300 more forthcoming, which Bruce Hanson and I will try to work out with the insurance company. I have doubts, however, because I think that amount represents the corporate fee of the insurance company for handling the matter, but I'll keep you advised.

I've had the pleasure of having lunch with you at Frank's several times and I hope you can return the pleasure to me by coming down to the City Hall area soon.

With warm regards.

Sincerely,

Carl Rachlin

commission on the delta ministry

national council of the churches of christ in the u.s.a.

475 riverside drive, new york, n. y. 10027 telephone: 870-2456

rt. rev. paul moore, jr.
chairman

rev. arthur c. thomas
director

November 14, 1966

Mr. Carl Rachlin
General Counsel
Scholarship Education and Defense Fund
for Racial Equality
150 Nassau Street
New York, New York 10038

Dear Mr. Rachlin:

Enclosed, please find a check for $4,800 representing repayment of money deposited with the National Council of Churches, which was in turn deposited with the Yorkshire Insurance Company to obtain bond for Lois Chaffe.

The original amount deposited with the NCC was $5,100. Three premium payments reduced that amount to $4,800, or so we think at the moment. If we discover that its possible to get any or all of the difference between $4,800 and $5,100 back to you, we shall do so at the earliest possible time. We need to get a few more questions answered, but in the meantime, I wanted you to get as much of the money as possible.

CORE has also inquired about this money, and it is my understanding that the check was to be made out to you and you would be settling with the CORE office.

In reference to your November 2, 1966, letter to Dr. Payton, I shall find out as quickly as possible the status of the Canton cases.

Sincerely yours,

Bruce

Bruce Hanson
Special Assistant to the
Executive Director

BH:gm
Enclosure

COPY

National Council of the Churches of Christ in the U.S.A.
475 Riverside Drive, N.Y. 10027 Tel. 870-2438

December 16, 1964

Mrs. James Farmer
Congress of Racial Equality
38 Park Row
New York, N. Y. 10038

Dear Mrs. Farmer:

Pursuant to our telephone conversation of this date, I inform you that on February 20, 1964 the National Council of Churches sent $7,277 to Carsie Hall, Esq. in Jackson, Mississippi, to provide cash bail for nine members of CORE's Canton, Mississippi Project who were then incarcerated. Of that amount $4,100 had been given to us by individuals as loans only after CORE had agreed to indemnify these individuals in the event their money was forfeited to the courts. Under this agreement, Mr. Albert Mayer of 31 Union Square West, New York, N. Y., loaned $500; Mrs. Louis G. Cowan, 941 Park Avenue, New York City, loaned $1,000; and Mrs. James Slater of Barlow Lane, Rye, New York, loaned $2,600.

For your records, I would indicate that the Alumnae Association of Vassar College loaned $400 for which they expect to be reimbursed. The Student Body of Vassar College contributed $277 to the NAACP Legal Defense and Educational Fund, Inc. which in turn loaned that amount to us for these bail purposes. Finally, we appropriated $2,500 from our own Emergency Bail Fund for which we eventually hope to be reimbursed.

It is my present understanding that the entire amount of $7,277 is still on deposit with the County officials of Madison County, Mississippi, and that the defendants are still free under bail.

Sincerely yours,

John M. Pratt
Counsel to the Commission

JMP:bs

For: Brad Brewer RE: CHAFFEE

1) Questions presented are not sexy enough

a) (1) is weak; our positoin is not that it will result in discouraging activities, but that the charge was entered to discourage and will have that result.

b) Number 2 should be Number 3

c) Number 3 should be Number 2 and jazzed up to state that we were prevented from making a good record before Judge Mize because Dombrowski had not yet been decided.

Bottom of Page 5 and top of Page 6:

that sentence should be eliminated at that point and put in the next paragraph.

On Page 5 , middle of page, insert a sentence after the words "State of Mississippi"

" Is the result of the massive refusal of the State to accept James Meridith as a student "

Pick up with next words, which are "riots had occurred".

d) End of middle paragraph on Page 6:

Change period to comma and add: by another heinous crime in intransigent Mississippi, a more modern form of lynching.

In the middle of the same para. between "massive" and "demonstrations" insert the word "peaceful"

e) On Page 7 at end of first paragraph "(it should be noted that Ray is the same officer who was responsible for the arrests in Thomas v. Mississippi,

____, ____, ___,

f) The next paragraph, at the end "(Moore is the Judge who sat in Thomas v. Mississippi, supra.))

Carl Rachlin will go through the argument part of the Petition again, but these suggestions are immediate.

MSS SEDFRE
546

Chapel Hill Cases, Feb-Nov. 1964

State Historical Society of Wisconsin

Please Retain Original Order

Box
Folder

THE FOLLOWING PAGES ARE THE BEST AVAILABLE.

[illegible]

[illegible]

[illegible]	- Appearance Bonds [illegible]	[illegible]	
[illegible]	- Appearance Bonds [illegible]	[illegible]	
[illegible]	- Appearance Bonds [illegible]	[illegible]	
[illegible]	- Paid on Account		[illegible]
[illegible]	- Appearance Bonds [illegible]	[illegible]	
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[illegible]	- Paid on Account		[illegible]
[illegible]	- Appearance Bonds [illegible]	[illegible]	
[illegible]	- [illegible] - Cancelled		[illegible]
	Totals	[illegible]	[illegible]
		[illegible]	[illegible]

NORTH CAROLINA
ORANGE COUNTY

HON. C. W. HALL, JUDGE PRESIDING
HON. T. D. COOPER, JR., SOLICITOR

CRIMINAL COURT CALENDAR
FEBRUARY 24, 1964

APPEARANCE DOCKET

1550	James Herman Lewis	Mfg. Liquor; Poss. Equip. for mfg.
1655	Cal Chambers	AWDW/Intent to Kill
1720	Thomas S. Fuller	N. O. L.
1911	Dorsey B. Haley	D.W.D.
1940	Joe Lewis	Non-Support
1980	Joe Lewis Burnette	Larceny of Auto Plates
1981	Joe Lewis Burnette	Illegal Use of Plates
1982	Joe Lewis Burnette	No Liability Insurance
2009	Roy Lee Merritt	Non-Support
2052	Johnnie J. Robinson	Burglary
2088	Charlie Coble	Neglect of minor children
2099	Cecil Bolton	Forgery
3044	Benjamin Mason	AWDW/Intent to Kill
3061	Frank Fuller	Speeding 70 mph in 55 zone
3166	Joe Lewis Royster	Non-Support
3272	Leslie Carl Madison	Non-Support
3203	Lewis Jacobs	Non-Support
3097	Lonnie Frank Harris	D. D.
3134	Margaret Louise Cates	D. W. D.
3135	Margaret Louise Cates	Improper Registration
3235	Joe Lewis Burnette	Non-Support
3238	Walter McKenzie	D. U. I.

POST CONVICTION HEARINGS

When cases will
be set.

94	StVs: John E. Fitzgerald	
1892	StVs: William L. Campbell	
1828 thru 1834	StVs: Eugene Womble	Cancld 64922

GRAND JURY

1636	StVs: William Curitan	Trespassing
1637	StVs: John Farrington	Trespassing
1638	StVs: Dave Mason, Jr.	Trespassing
1640	StVs: James Merritt	Trespassing
1642	StVs: Earl Geer	Trespassing
3207	StVs: Hazel Laney	Trespassing
3208	StVs: Alice Terrell	Trespassing
3209	StVs: Charlie Foushee	Obstructing Traffic
3210	StVs: Norman E. Leak	Obstructing Traffic
3211	StVs: James Gardner	Obstructing Traffic
3212	StVs: Harold Ceyes Foster	Blocking Sidewalk
3214	StVs: Ida Mae Fikes	Trespassing
3215	StVs: Robert Lee King	Trespassing
3216	StVs: Robert Lee Thompson	Trespassing
3217	StVs: Mary Ann Benton	Trespassing
3218	StVs: Thomas L. Bynum	Trespassing
3219	StVs: Walter Mitchell	Trespassing
3221	StVs: Robert V. N. Brown	Obstructing Traffic
3222	StVs: Harold Foster	Obstructing Traffic
3223	StVs: Paul Farrington	Trespass
3224	StVs: John Henry Fikes	Trespass
3225	StVs: Stuart F. Chapin, III	Trespass
3228	StVs: Peter Lybrook VanRiper	Trespass
3229	StVs: Hooker Butler	Assault on Female
3232	StVs: Leonard Thell Jernigan	D. U. I.
3262	StVs: Algin Terrell, Jr.	AWDW
3268	StVs: Samuel Newton Dossett	D. U. I.
3274	StVs: Harold Clark	R. D.
3275	StVs: Harold Clark	R. D.
3538	StVs: Van Cornelius	Trespassing
3539	StVs: VanCornelius	Resist Arrest
3540	StVs: Carolyn Edwards	Trespassing
3541	StVs: Carolyn Edwards	Resist Arrest

3542	StVs:	Mary Frances Black	Resist Arrest
3543	StVs:	Mary Frances Black	Trespass
3544	StVs:	Louis Calhoon	Trespass
3545	StVs:	Louis Calhoon	Resist Arrest
3546	StVs:	Quinton Baker	Trespass
3547	StVs:	Quinton Baker	Assault on Female
3548	StVs:	William Wynn	Trespass
3549	StVs:	William Wynn	Assault on Female
3550	StVs:	David Smith	Trespass
3551	StVs:	David Smith	Assault on Female
3552	StVs:	Frederick Herzog	Trespass
3553	StVs:	Frederick Herzog	Assault on Female
3554	StVs:	Ben Spaulding	Trespass
3555	StVs:	Ben Spaulding	Assault on Female
3556	StVs:	Peter Klopfer	Trespass
3557	StVs:	Peter Klopfer	Assault on Female
3558	StVs:	Thomas Bynum	Trespass
3559	StVs:	Thomas Bynum	Assault on Female
3560	StVs:	John B. Dunne	Trespass
3561	StVs:	John B. Dunne	Assault on Female
3562	StVs:	Robert Osborn	Trespass
3563	StVs:	Robert Osborn	Assault on Female
3564	StVs:	Harmon Smith	Trespass
3565	StVs:	Harmon Smith	Assault on Female
3566	StVs:	David Vanden Hewel	Resist Arrest
3567	StVs:	David Vanden Hewel	Trespass
3568	StVs:	Lawrance Landuman	Trespass
3569	StVs:	Lawrance Landuman	Resist Arrest
3570	StVs:	James T. Foushee	Trespass
3571	StVs:	Norman (Peter) Leak	Trespass
3572	StVs:	Norman (Peter) Leak	Resist Arrest
3573	StVs:	Joseph Tiger	Trespass
3574	StVs:	Joseph Tiger	Resist Arrest
3576	StVs:	Johnny Wesley Hester	R. D.
3577	StVs:	Johnny Wesley Hester	Manslaughter
3581	StVs:	James Merril Grady	D. A. L. R.
3582	StVs:	Charles Brooks	D. U. I.
3583	StVs:	Nord Jackson Tinnin	D. U. I.
3584	StVs:	Harry Fuquay	A.W.D.W./Intent to kill
3585	StVs:	Harry Fuquay	Kidnapping
3586	StVs:	Harry Fuquay	A.W.D.W.
3589	StVs:	Eugene W. Clark	Inadequate Support
3591	StVs:	Gilbert Eugene Strowd	D. D.
3592	StVs:	Chester Hardy Lunsford	Manslaughter
3593	StVs:	Chester Hardy Lunsford	R. D.
3594	StVs:	Robert Agner Luts	Speeding 70 mph in 55 zone

TRIAL

2055	StVs:	Clyde W. Stevenson	D. W. D.
2057	StVs:	Steven G. McClelland	D. U. I.
3024	StVs:	Nathan Ashwell	Escape
3025	StVs:	Nathan Ashwell	Larceny of Auto
3026	StVs:	Bruce A. Wethington	Escape
3027	StVs:	Bruce Wethington	Larceny of Auto
3053	StVs:	Charles A. Pamplin, III	D. D.
3096	StVs:	Gerald R. Allen	D. U. I.
3119	StVs:	Jesse Durham	Forgery
3165	StVs:	Joe Royster	Assault on Female
3172	StVs:	Theodore Walden	D. W. D.
3199	StVs:	Frank Fuller	Non-Support
3200	StVs:	Frank Fuller	Expired State Plates
3202	StVs:	Lewis Jacobs	Inadequate Support
3203	StVs:	Tommy Samuel Fuller	Non-Support
3246	StVs:	Glenn Stephenson alias Atlas Stephenson	Incest
3247	StVs:	Atlas David Stephenson alias Glenn Stephenson	Assault on Female
3248	StVs:	Bennie Lee Woods	A.W. D. W.

NORTH CAROLINA
ORANGE COUNTY

HON. RAYMOND B. MALLARD,
JUDGE PRESIDING
HON. THOMAS D. COOPER, JR.,
SOLICITOR

CRIMINAL COURT CALENDAR

SPECIAL TERM

MARCH 2 - MARCH 21, 1964

THE FOLLOWING CASES WILL BE PRESENTED TO THE GRAND JURY ON MONDAY, MARCH 2nd, AND MAY BE CALLED FOR TRIAL AT ANY TIME DURING THE THREE WEEKS OF THE TERM. THE CASES WILL NOT NECESSARILY BE CALLED IN NUMERICAL ORDER.

GRAND JURY

3301	StVs:	Jeredene Alston	Resisting Arrest
3302	StVs:	Jeredene Alston	Trespassing
3303	StVs:	Roosevelt Atwater	Disorderly Conduct
3304	StVs:	Roosevelt Atwater	Resisting Arrest
3305	StVs:	Walter Mitchell) Jerdene Alston) Christine Harris) Jo Ann Johnston) Sherwood Nance) Peter Van Riper) Ruby E. Farrington) Andy Moursand) Charlise Cotton) Stella May Farrar) James V. Henry)	Forcible Trespass
3306	StVs:	James V. Henry	Resisting Arrest
3307	StVs:	Andy Moursand	Resisting Arrest
3308	StVs:	Peter Van Riper	Resisting Arrest
~~3309~~	~~StVs:~~	~~Sherwood O. Nance~~	Resisting Arrest
3310	StVs:	Christene Harris	Resisting Arrest
3311	StVs:	Jo Ann Johnson	Resisting Arrest
3312	StVs:	Walter Mitchell	Resisting Arrest
3313	StVs:	Ruby E. Farrington	Resisting Arrest
3314	StVs:	Charliese P. Cotton	Resisting Arrest
3315	StVs:	Stella Farrar	Resisting Arrest
3316	StVs:	Jeredene Alston	Resisting Arrest
3317	StVs:	Evelyn J. Walker	Obstructing Sidewalk
3318	StVs:	Evelyn J. Walker	Resisting Arrest
3319	StGs:	Stephanie J. Wilber	Resisting Arrest
3320	StVs:	Stephanie Jane Wilber	Trespassing
3321	StVs:	Peggy Wiles	Trespassing
3322	StVs:	Peggy Wiles	Resisting Arrest
3323	StVs:	Janet Williams	Trespassing
3324	StVs:	Janet Williams	Resisting Arrest
3325	StVs:	Janet N. Williams	Trespassing
3326	StVs:	Janet Willaims	Resisting Arrest
3327	StVs:	Van DuBose Williams	Resisting Arrest
3328	StVs:	Van DuBose Williams	Trespassing
3329	StVs:	LaVort H. Taylor	Trespassing
3330	StVs:	LaVort H. Taylor	Resisting Arrest
3331	StVs:	Charles L. Thompson	Obstructing Sidewalk
3332	StVs:	Charles L. Thompson	Resisting Arrest
3333	StVs:	Charles Thompson	Resisting Arrest
3334	StVs:	Charles Thompson	Trespassing
3335	StVs:	Charles LeRoy Thompson	Trespassing
3336	StVs:	Charles LeRoy Thompson	Resisting Arrest
3337	StVs:	Robert Lee Thompson	Resisting Arrest
3338	StVs:	Robert L. Thompson	Obstructing Sidewalk
3339	StVs:	Robert F. Thompson	Resisting Arrest
3340	StVs:	Robert Lee Thompson	Obstructing Sidewalk
3341	StVs:	Joseph Tieger	Trespassing
3342	StVs:	Joseph H. Tieger	Resisting Arrest
3343	StVs:	Joseph H. Tieger	Resisting Arrest
3344	StVs:	Joseph H. Tieger	Trespassing
3345	StVs:	Joseph H. Tieger	Obstructing Sidewalk

3346	StVs:	Joseph Harold Tieger	Resisting Arrest
3347	StVs:	Joseph H. Tieger	Trespassing
3348	StVs:	Joseph Harold Tieger	Resisting Arrest
3349	StVs:	Joseph H. Tieger	Resisting Arrest
3350	StVs:	Joseph H. Tieger	Trespassing
3351	StVs:	Joseph H. Tieger	Disorderly Conduct
3352	StVs:	Joseph H. Tieger	Resisting Arrest
3353	StVs:	Phyliss Timberlake	Trespassing
3354	StVs:	Phyliss Timberlake	Trespassing
3355	StVs:	Phyliss Timberlake	Resisting Arrest
3356	StVs:	Arthur L. Tracy	Resisting Arrest
3357	StVs:	Arthur L. Tracy	Trespassing
3358	StVs:	Arthur L. Tracy	Resisting Arrest
3359	StVs:	Arthur L. Tracy	Trespassing
3360	StVs:	Arthur L. Tracy	Disorderly Conduct
3361	StVs:	Arthur L. Tracy	Resisting Arrest
3362	StVs:	John R. Salter	Resisting Arrest
3363	StVs:	John R. Salter	Trespassing
3364	StVs:	Willa M. Sanders	Resisting Arrest
3365	StVs:	Willa M. Sanders	Trespassing
3366	StVs:	John Salter	Trespassing
3367	StVs:	John Randell Salter, Jr.	Resisting Arrest
3368	StVs:	Henry Sanford	Obstructing Sidewalk
3369	StVs:	Henry Sanford	Trespassing
3370	StVs:	Henry Sanford	Trespassing
3371	StVs:	Henry Sanford	Resisting Arrest
3372	StVs:	Henry Sanford	Trespassing
3373	StVs:	Henry Sanford	Resisting Arrest
3374	StVs:	Henry Sanford	Resisting Arrest
3375	StVs:	Henry Sanford	Trespassing
3376	StVs:	Henry Sanford	Resisting Arrest
3377	StVs:	Henry Sanford	Trespassing
3378	StVs:	Henry Sanford	Disorderly Conduct
3379	StVs:	Henry Sanford	Resisting Arrest
3380	StVs:	John T. Shively	Obstructing Sidewalk
3381	StVs:	John T. Shively	Resisting Arrest
3382	StVs:	John T. Shively	Trespassing
3383	StVs:	John T. Shively	Resisting Arrest
3384	StVs:	John Shively	Trespassing
3385	StVs:	John Shively	Resisting Arrest
3386	StVs:	John Shively	Resisting Arrest
3387	StVs:	John Shively	Obstructing Sidewalk
3388	StVs:	John T. Shively	Resisting Arrest
3389	StVs:	John T. Shively	Trespassing
3390	StVs:	Arthur B. Simons	Trespassing
3391	StVs:	Arthur Bruce Simons	Trespassing
3392	StVs:	Arthur Bruce Simons	Resisting Arrest
3393	StVs:	Arthur B. Simons	Resisting Arrest
3394	StVs:	Arthur B. Simons	Resisting Arrest
3395	StVs:	Arthur B. Simons	Trespassing
3396	StVs:	Elvira Smith	Trespassing
3397	StVs:	Elvira Smith	Resisting Arrest
3398	StVs:	Ben W. Spaulding	Trespassing
3399	StVs:	Ben W. Spaulding	Resisting Arrest
3400	StVs:	William B. Spruell	Resisting Arrest
3401	StVs:	William B. Spruell	Trespassing
3402	StVs:	James K. Smith	Trespassing
3403	StVs:	James K. Smith	Resisting Arrest
3404	StVs:	O'Fleta R. Rankin	Resisting Arrest
3405	StVs:	O'Fleta R. Rankin	Obstructing Sidewalk
3406	StVs:	Mary Reckford	Resisting Arrest
3407	StVs:	Mary Reckford	Trespassing
3408	StVs:	Thomas N. Reed	Trespassing
3409	StVs:	Thomas N. Reed	Resisting Arrest
3410	StVs:	Clarence Rogers	Resisting Arrest
3411	StVs:	Clarence Rogers	Obstructing Sidewalk
3412	StVs:	Florence J. Ryan	Trespassing
3413	StVs:	Florence J. Ryan	Resisting Arrest
3414	StVs:	Ronald Ross	Resisting Arrest
3415	StVs:	Ronald Ross	Trespassing
3416	StVs:	Lavon B. Page	Obstructing Sidewalk
3417	StVs:	Lavon B. Page	Resisting Arrest

3418	StVs:	Clarence E. Parker	Resisting Arrest
3419	StVs:	Clarence P. Parker	Trespassing
3420	StVs:	Karen Parker	Trespassing
3421	StVs:	Karen Lynn Parker	Obstructing Sidewalk
3422	StVs:	Karen Parker	Resisting Arrest
3423	StVs:	Karen Lynn Parker	Resisting Arrest
3424	StVs:	Kellis E. Parker	Trespassing
3425	StVs;	Kellis E. Parker	Resisting Arrest
3426	StVs:	Shirley Pendergraft	Resisting Arrest
3427	StVs:	Shirley Pendergraft	Trespassing
3428	StVs:	Shirley Pendergraft	Resisting Arrest
3429	StVs:	Shirley Pendergraft	Disorderly Conduct
3430	StVs:	Shirley Pendergraft	Resisting Arrest
3431	StVs:	Shirley Pendergraft	Trespassing
3432	StVs:	Timothy H. Perkins	Resisting Arrest
3433	StVs:	Timothy H. Perkins	Trespassing
3434	StVs:	Timothy Perkins	Trespassing
3435	StVs:	Timothy Perkins	Resisting Arrest
3436	StVs:	Timothy Howard Perkins	Trespassing
3437	StVs:	Timothy H. Perkins	Resisting Arrest
3438	StVs:	Johnny Perry	Resisting Arrest
3439	StVs:	Johnny Perry	Trespassing
3440	StVs:	Johnny L. Perry	Trespassing
3441	StVs:	Johnny L. Perry	Resisting Arrest
3442	StVs:	Johnny L. Perry	Resisting Arrest
3443	StVs:	Johnny L. Perry	Trespassing
3444	StVs:	Dorothy I. McQuown	Trespassing
3445	StVs:	Dorothy I. McQuown	Resisting Arrest
3446	StVs:	Geraldine C. McIver	Resisting Arrest
3447	StVs:	Geraldine C. McIver	Trespassing
3448	StVs:	Kathryn J. Noyes	Resisting Arrest
3449	StVs:	Kathryn J. Noyes	Trespassing
3450	StVs:	David E. McReynolds	Trespassing
3451	StVs:	Charles Miller	Trespassing
3452	StVs:	Charles Miller	Resisting Arrest
3453	StVs:	Charles Miller	Resisting Arrest
3454	StVs:	Charles Miller	Trespassing
3455	StVs:	Ralph W. Mitchell	Resisting Arrest
3456	StGs:	Ralph W. Mitchell	Trespassing
3457	RtVs:	Ralph W. Mitchell	Trespassing
3458	StVs:	Ralph W. Mitchell	Resisting Arrest
3459	StVs:	Ralph W. Mitchell	Trespassing
3460	StVs:	Ralph W. Mitchell	Resisting Arrest
3461	StVs:	Johnson H. Neville	Obstructing Sidewalk
3462	StVs:	Johnson H. Neville	Resisting Arrest
3463	StVs:	Christopher E. Munger	Resisting Arrest
3464	StVs:	Christopher E. Munger	Obstructing Sidewalk
3465	StVs:	Christopher E. Munger	Trespassing
3466	StVs:	Christopher E. Munger	Resisting Arrest
3467	StVs:	Andy Moursand	Trespassing
3468	StVs:	Andy Moursand	Resisting Arrest
3469	StVs:	Walter Mitchell	Trespassing
3470	StVs:	Walter Mitchell	Disorderly Conduct
3471	StVs:	Walter Mitchell	Resisting Arrest
3472	StVs:	Walter Mitchell	Trespassing
3473	StVs:	Walter Mitchell	Resisting Arrest
3473A	StVs:	Walter Mitchell	Resisting Arrest
3474	StVs:	Walter Mitchell	Trespassing
3475	StVs:	Walter Mitchell	Resisting Arrest
3476	StVs:	Walter Mitchell	Resisting Arrest
3477	StVs:	Walter Mitchell	Obstructing Sidewalk
3478	StVs:	Quinton Baker	Trespassing
3479	StVs:	Quinton Baker	Resisting Arrest
3480	StVs:	William F. Griffeth, Jr.	Resisting Arrest
3481	StVs:	William F. Griffeth, Jr.	Obstructing Sidewalk
3482	StVs:	Janet McNeal Greene	Trespassing
3483	StVs:	Janet M. Greene	Resisting Arrest
3484	StVs:	Thomas F. Gibbons	Resisting Arrest
3485	StVs:	Thomas F. Gibbons	Trespassing
3486	StVs:	Peggy S. Jackson	Trespassing
3487	StVs:	Peggy S. Jackson	Resisting Arrest
3488	StVs:	Peggy S. Jackson	Obstructing Sidewalk
3489	StVs:	Peggy S. Jackson	Resisting Arrest

3490	StVs:	William T. Cash, Jr.	Resisting Arrest
3491	StVs:	William T. Cash, Jr.	Trespassing
3492	StVs:	Van Cornelius	Trespassing
3493	StVs:	Van Cornelius	Resisting Arrest
3494	StVs:	W. Van Cornelius	Resisting Arrest
3495	StVs:	W. Van Cornelius	Trespassing
3496	StVs:	Charliese P. Cotton	Trespassing
3497	StVs:	Charliese P. Cotton	Resisting Arrest
3498	StVs:	Charliese P. Cotton	Disorderly Conduct
3499	StVs:	Charliese P. Cotton	Resisting Arrest
3500	StVs:	Richard N. Creel	Obstructing Sidewalk
3501	StVs:	Richard N. Creel	Resisting Arrest
3502	StVs:	Richard N. Creel	Resisting Arrest
3503	StVs:	R. N. Creel	Trespassing
3504	StVs:	Arthur F. Crisp	Trespassing
3505	StVs:	Arthur F. Crisp	Resisting Arrest
3506	StVs:	Arthur F. Crisp	Trespassing
3507	StVs:	Arthur F. Crisp	Resisting Arrest
3508	StVs:	Stella Farrar	Resisting Arrest
3509	StVs:	Stella Farrar	Trespassing
3510	StVs:	Stella May Farrar	Resisting Arrest
3511	StVs:	Stella May Farrar	Disorderly Conduct
3512	StVs:	Betty G. Farrington	Obstructing Sidewalk
3513	StVs:	Betty G. Farrington	Resisting Arrest
3514	StVs:	Betty Farrington	Resisting Arrest
3515	StVs:	Betty Farrington	Trespassing
3516	StVs:	Katherine Farrington	Trespassing
3517	StVs:	Katherine Farrington	Resisting Arrest
3518	StVs:	Ruby E. Farrington	Obstructing Sidewalk
3519	StVs:	Ruby Farrington	Resisting Arrest
3520	StVs:	Ruby E. Farrington	Resisting Arrest
3521	StVs:	Ruby E. Farrington	Trespassing
3522	StVs:	John K. Farnum	Trespassing
3523	StVs:	John K. Farnum	Resisting Arrest
3524	StVs:	John K. Farnum	Trespassing
3525	StVs:	John K. Farnum	Resisting Arrest
3526	StVs:	John Fikes	Resisting Arrest
3527	StVs:	John Fikes	Trespassing
3528	StVs:	John H. Fikes	Trespassing
3529	StVs:	John H. Fikes	Resisting Arrest
3530	StVs:	Quinton Baker	Resisting Arrest
3531	StVs:	Quinton Baker	Trespassing
3532	StVs:	Quinton E. Baker	Resisting Arrest
3533	StVs:	Quinton E. Baker	Trespassing
3534	StVs:	Quinton E. Baker	Trespassing
3535	StVs:	Quinton E. Baker	Resisting Arrest
3536	StVs:	Thomas E. Bell	Resisting Arrest
3597	StVs:	Thomas E. Bell	Obstructing Sidewalk
3598	StVs:	Mary A. Benton	Obstructing Sidewalk
3599	StVs:	Mary A. Benton	Resisting Arrest
3600	StVs:	Mary T. Black	Resisting Arrest
3601	StVs:	Mary F. Black	Trespassing
3602	StVs:	Mary Frances Black	Resisting Arrest
3603	StVs:	Mary Frances Black	Trespassing
3604	StVs:	Cheville D. Blackwell	Resisting Arrest
3605	StVs:	Cheville D. Blackwell	Trespassing
3606	StVs:	Charles A. Booth	Disorderly Conduct
3607	StVs:	Charles A. Booth	Resisting Arrest
3608	StVs:	Harry C. Boyte	Resisting Arrest
3609	StVs:	Harvey C. Boyte	Trespassing
3610	StVs:	Harry C. Boyette	Trespassing
3611	StVs:	Harry C. Boyette	Resisting Arrest
3612	StVs:	Barbara R. Brittain	Resisting Arrest
3613	StVs:	Barbara R. Brittian	Obstructing Sidewalk
3614	StVs:	James Brittian	Disorderly Conduct
3615	StVs:	James Brittian	Resisting Arrest
3616	StVs:	Cynthia Lavine Bryant	Trespassing
3617	StVs:	Cynthia LaVerne Bryant	Resisting Arrest
3618	StVs:	Rupert A. Buchanan	Trespassing
3619	StVs:	Rupert A. Buchanan	Resisting Arrest
3620	StVs:	Coleen Burnett	Resisting Arrest
3621	StVs:	Coleen Burnette	Trespassing

3622	StVs:	Coleen Burnette	Resisting Arrest
3623	StVs:	Coleen Burnette	Trespassing
3624	StVs:	Coleen Burnette	Trespassing
3625	StVs:	Coleen Burnette	Resisting Arrest
3626	StVs:	Coleen Burnette	Trespassing
3627	StVs:	Coleen Burnette	Resisting Arrest
3628	StVs:	Theodore Bynum, Jr.	Obstructing Sidewalk
3629	StVs:	Theodore N. Bynum, Jr.	Resisting Arrest
3630	StVs:	Thomas Bynum	Trespassing
3631	StVs:	Thomas N. Bynum	Resisting Arrest
3632	StVs:	Thomas Nathaniel Bynum	Trespassing
3633	StVs:	Thomas Nathaniel Bynum	Resisting Arrest
3634	StVs:	Thomas N. Bynum	Trespassing
3635	StVs:	Thomas N. Bynum	Resisting Arrest
3636	StVs:	Thomas N. Bynum	Resisting Arrest
3637	StVs:	Thomas N. Bynum	Trespassing
3638	StVs:	Thomas N. Bynum	Resisting Arrest
3639	StVs:	Thomas N. Bynum	Trespassing
3640	StVs:	Carolyn L. Edwards	Resisting Arrest
3641	StVs:	Carolyn L. Edwards	Trespassing
3642	StVs:	Michael J. Edwards	Obstructing Sidewalk
3643	StVs:	Michael J. Edwards	Resisting Arrest
3644	StVs:	Henry Elkins	Trespassing
3645	StVs:	Henry Elkins	Resisting Arrest
3646	StVs:	Virginia Ericson	Trespassing
3647	StVs:	Virginia Erickson	Resisting Arrest
3648	StVs:	Virginia Ericson	Trespassing
3649	StVs:	Virginia Ericson	Resisting Arrest
3650	StVs:	Rosemary Ann Ezra	Trespassing
3651	StVs:	Rosemary Ann Ezra	Resisting Arrest
3652	StVs:	Hillard Caldwell	Obstructing Sidewalk
3652A	StVs:	Hillard Caldwell	Resisting Arrest
3653	StVs:	Louis Calhoun	Trespassing
3654	StVs:	Louis Calhoun	Resisting Arrest
3655	StVs:	Louis S. Calhoun	Obstructing Sidewalk
3656	StVs:	Louis S. Calhoun, Jr.	Resisting Arrest
3657	StVs:	Louis J. Calhoun	Trespassing
3658	StVs:	Louis S. Calhoun	Resisting Arrest
3659	StVs:	Henry N. Campbell	Resisting Arrest
3660	StVs:	Henry N. Campbell	Trespassing
3661	StVs:	David G. Canalos	Resisting Arrest
3662	StVs:	David G. Canalos	Trespassing
3663	StVs:	Gilbert W. File	Trespassing
3664	StVs:	Gilbert W. File	Resisting Arrest
3665	StVs:	James Thomas Foushee	Trespassing
3666	StVs:	James Thomas Foushee	Resisting Arrest
3667	StVs:	James T. Foushee	Resisting Arrest
3668	StVs:	James T. Foushee	Disorderly Conduct
3669	StVs:	David M. Dansby	Trespassing
3670	StVs:	David L. Davis	Obstructing Sidewalk
3671	StVs:	David L. Davis	Resisting Arrest
3672	StVs:	David Davis	Resisting Arrest
3673	StVs:	David Davis	Trespassing
3674	StVs:	David Davis	Trespassing
3675	StVs:	David Davis	Resisting Arrest
3676	StVs:	David Davis	Trespassing
3677	StVs:	David Davis	Resisting Arrest
3678	StVs:	Richard G. Doble	Trespassing
3679	StVs:	Richard G. Doble	Resisting Arrest
3680	StVs:	Dorothy M. Donaldson	Trespassing
3681	StVs:	Dorothy M. Donaldson	Resisting Arrest
3682	StVs:	John Dunne	Trespassing
3683	StVs:	John Dunne	Resisting Arrest
3684	StVs:	John B. Dunne	Resisting Arrest
3685	StVs:	John B. Dunne	Trespassing
3686	StVs:	John B. Dunne	Trespassing
3687	StVs:	John B. Dunne	Resisting Arrest
3688	StVs:	John B. Dunne	Obstructing Sidewalk
3689	StVs:	Bertha Johnson	Trespassing
3690	StVs:	Bertha Johnson	Resisting Arrest
3691	StVs:	Jo Ann Johnson	Trespassing
3692	StVs:	Jo Ann C. Johnston	Resisting Arrest

3693	StVs:	Jo Ann Johnson	Resisting Arrest
3694	StVs:	Jo Ann Johnson	Trespassing
3695	StVs:	Jo Ann Johnson	Obstructing Sidewalk
3696	StVs:	Jo Ann Johnson	Resisting Arrest
3697	StVs:	Morris Johnson	Trespassing
3698	StVs:	Morris Johnson	Resisting Arrest
3699	StVs:	Ben L. Jones	Obstructing Sidewalk
3700	StVs:	Ben L. Jones	Resisting Arrest
3701	StVs:	Ben Louis Jones	Resisting Arrest
3702	StVs:	Ben Louis Jones	Trespassing
3703	StVs:	Diana A. Jones	Trespassing
3704	StVs:	Diana A. Jones	Resisting Arrest
3705	StVs:	Victor Lee Jones	Trespassing
3706	StVs:	Victor L. Jones	Resisting Arrest
3707	StVs:	Victor Lee Jones	Resisting Arrest
3708	StVs:	Victor Lee Jones	Trespassing
3709	StVs:	Jan J. Jorgenson	Resisting Arrest
3710	StVs:	Jan J. Jorgenson	Trespassing
3711	StVs:	Brantly F. Kearns, Jr.	Obstructing Sidewalk
3712	StVs:	Brantly F. Kearns, Jr.	Resisting Arrest
3713	StVs:	Freda Laney	Trespassing
3714	StVs:	Freda Laney	Resisting Arrest
3715	StVs:	Freda A. Laney	Resisting Arrest
3716	StVs:	Freda A. Laney	Obstructing Sidewalk
3717	StVs:	Norman Eugene (Pete) Leak	Trespassing
3718	StVs:	Norman Eugene (Pete) Leak	Resisting Arrest
3719	StVs:	Franklin M. Harper	Trespassing
3720	StVs:	Franklin M. Harper	Resisting Arrest
3721	StVs:	Wayne Harris	Obstructing Sidewalk
3722	StVs:	Wayne Harris	Resisting Arrest
3723	StVs:	Marshall D. Hay	Resisting Arrest
3724	StVs:	Marshall D. Hay	Trespassing
3725	StVs:	James V. Henry	Trespassing
3726	StVs:	James V. Henry	Resisting Arrest
3727	StVs:	James V. Henry	Resisting Arrest
3728	StVs:	James V. Henry	Trespassing
3729	StVs:	James V. Henry	Disorderly Conduct
3730	StVs:	James V. Henry	Resisting Arrest
3731	StVs:	Paul J. Hutzler	Trespassing
3732	StVs:	Paul J. Hutzler	Resisting Arrest
3733	StVs:	Walter Mitchell) Virginia Ericson) Quinton Baker) Mary Reckford) John R. Salter) Ben W. Spaulding)	Assault and Battery

---

TRIAL

Monday, March 2, 1964

1636	StVs:	William Curitan	Trespassing
1637	StVs:	John Farrington	Trespassing
1638	StVs:	Dave Mason, Jr.	Trespassing
1640	StVs:	James Merritt	Trespassing
1642	StVs:	Earl Geer	Trespassing
3207	StVs:	Hazel Laney	Trespassing
3208	StVs:	Alice Terrell	Trespassing
3209	StVs:	Charlie Foushee	Obstructing Traffic
3210	StVs:	Norman E. Leak	Obstructing Traffic
3211	StVs:	James Gardner	Obstructing Traffic
3212	StVs:	Harold Ceyes Foster	Blocking Sidewalk
3214	StVs:	Ida Mae Fikes	Trespassing
3215	StVs:	Robert Lee King	Trespassing
3216	StVs:	Robert Lee Thompson	Trespassing
3217	StVs:	Mary Ann Benton	Trespassing
3218	StVs:	Thomas L. Bynum	Trespassing
3219	StVs:	Walter Mitchell	Trespassing
3221	StVs:	Robert V. N. Brown	Obstructing Traffic
3222	StVs:	Harold Foster	Obstructing Traffic
3223	StVs:	Paul Farrington	Trespass
3224	StVs:	John Henry Fikes	Trespass

3225	StVs:	Stuart F. Chapin, III	Trespass
3228	StVs:	Peter Lybrook VanRiper	Trespass
3538	StVs:	Van Cornelius	Trespass
3539	StVs:	Van Cornelius	Resist Arrest
3540	StVs:	Carolyn Edwards	Trespassing
3541	StVs:	Carolyn Edwards	Resist Arrest
3542	StVs:	Mary Frances Black	Resist Arrest
3543	StVs:	Mary Frances Black	Trespass
3544	StVs:	Louis Calhoon	Trespass
3545	StVs:	Louis Calhoon	Resist Arrest
3546	StVs:	Quinton Baker	Trespass
3547	StVs:	Quinton Baker	Assault on Female
3548	StVs:	William Wynn	Trespass
3549	StVs:	William Wynn	Assault on Female
3550	StVs:	David Smith	Trespass
3551	StVs:	David Smith	Assault on Female
3552	StVs:	Frederick Herzog	Trespass
3553	StVs:	Frederick Herzog	Assault on Female
3554	StVs:	Ben Spaulding	Trespass
3555	StVs:	Ben Spaulding	Assault on Female
3556	StVs:	Peter Klopfer	Trespass
3557	StVs:	Peter Klopfer	Assault on Female
3558	StVs:	Thomas Bynum	Trespass
3559	StVs:	Thomas Bynum	Assault on Female
3560	StVs:	John B. Dunne	Trespass
3561	StVs:	John B. Dunne	Assault on Female
3562	StVs:	Robert Osborn	Trespass
3563	StVs:	Robert Osborn	Assault on Female
3564	StVs:	Harmon Smith	Trespass
3565	StVs:	Harmon Smith	Assault on Female
3566	StVs:	David Vanden Hewel	Resist Arrest
3567	StVs:	David Vanden Hewel	Trespass
3568	StVs:	Lawrance Landuman	Trespass
3569	StVs:	Lawrance Landuman	Resist Arrest
3570	StVs:	James T. Foushee	Trespass
3571	StVs:	Norman (Peter) Leak	Trespass
3572	stVs:	Norman (Peter) Leak	Resist Arrest
3573	StVs:	Joseph Tiger	Trespass
3574	StVs:	Joseph Tiger	Resist Arrest

LAW OFFICES OF
F. B. McKISSICK
213½ WEST MAIN STREET
DURHAM, NORTH CAROLINA

MAR 2 1964

COPY

February 27, 1964

Mr. Jack Greenberg, Director
Legal Defense and Educational Fund, Inc.
10 Columbus Circle
New York 19, New York

Re: CHAPEL HILL DEMONSTRATION CASES

Dear Jack:

On my last two visits to New York, I was unable to contact you. I did talk with Mr. Bell on the 21st of February, 1964, in regard to the above named cases at which time he suggested that I advise with Mr. Pearson and communicate with you the pertinent information regarding the attorneys working on the Chapel Hill Cases.

Be advised that Mr. C. C. Malone, Mr. W. G. Pearson, III, and Mr. W. A. Marsh of Durham and Mr. Moses C. Burt of Burlington are assisting me in the handling of these cases. On February 24, 1964, Mr. Marsh represented some of the defendants in the Chapel Hill Recorders Court which cases were bound over to the Superior Court where they will go before the Grand Jury.

You will note that the Court is doing everything possible to inconvient the Lawyers and the Defendants in these cases. I am enclosing an article from the Durham Morning Herald which will indicate same.

I talked briefly with Mr. Pearson today and he told me to write this letter and send a copy to him. Mr. Marsh has already spent three (3) days service in Court, however, his bill has been sent to CORE and they have advised that they will pay the same within the next few days. I have advised the attorneys that they will be paid $50.00 per day plus $10.00 travel expense and that subject to your approval and the approval of Mr. Pearson the bills will be sent through him for his approval.

RE: CHAPEL HILL DEMONSTRATION CASES

It looks as though one of the five (5) attorneys will be in Court continuously until all of the 482 cases are tried.

With very kind regards, I am

Yours very truly,

F. B. McKissick

FBMcK:ls

cc: Mr. C. O. Pearson, Esquire
203½ East Chapel Hill Street
Durham, North Carolina

Vladeck & Elias
Attorneys at Law
Attn: Mr. Carl Rachlin
280 Broadway
New York 7, New York

Encls: 2

March 2, 1964

Mr. Floyd B. McKissick
213½ West Main Street
Durham, North Carolina

RE: CHAPEL HILL DEMONSTRATION CASES

Dear Floyd:

A copy of your letter to Jack Greenberg has just reached me this morning. I have a date with him Wednesday, March 4, at 12:30 to discuss your overly extended calendar and related problems.in Mississippi. I will be in touch with you after our meeting.

With kindest personal regards.

Sincerely,

CR:LP

Carl Rachlin

LAW OFFICES OF
F. B. McKISSICK
213½ WEST MAIN STREET
DURHAM, NORTH CAROLINA

COPY

March 18, 1964

Mr. Jack Greenberg, Director
Legal Defense and Educational Fund
10 Columbus Circle
New York 19, New York

Re: CHAPEL HILL CASES

Dear Jack:

Enclosed herewith is the Petition which we filed for Removal and newspaper clipping in the above named matter.

I received your letter of March 5th in regard to this matter and I have attempted to reach you by phone, in fact, I left a message but the call was not returned.

As you suggested, I, too, would like to sit down with you, go through the cases one by one, put them into separate catagories for Legal Defense purposes. Let me know when you want this done.

With very kind regards, I am

Yours very truly,

F. B. McKissick

FBMcK:ls

cc: Mr. Carl Rachlin

N. A. A. C. P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

10 Columbus Circle, New York, N. Y. 10019

JUdson 6-8397

April 9, 1964

APR 13 1964

Carl Rachlin, Esq., General Counsel
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Carl:

I would like to pay the bills sent along with your letter of March 31st, but they are so large that I think we should do nothing with them until we sort out all of the Chapel Hill cases as I told Floyd. After we separate the civil disobedience from civil rights cases we will then discuss the nature of appeals and further proceedings and pay the lawyers' fees and costs. As this request is so large I don't think we should pay anything until we can see the whole picture.

I look forward to seeing Floyd sometime soon and working this out.

Sincerely,

Jack

Jack Greenberg
Director-Counsel

JG:rh

c.c. William A. Marsh, Jr., Esq.
M.C. Burt, Jr., Esq.
Clarence C. Malone, Esq.

$800.00

Contributions are deductible for U. S. income tax purposes

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The "Committee of 100," a voluntary cooperative group of individuals headed by Dr. Allan Knight Chalmers has sponsored the appeal of the N.A.A.C.P. Legal Defense and Educational Fund, Inc. since 1943 to enable the Fund to put into operation a program designed to make desegregation a reality throughout the United States.

[illegible] ________ [illegible] ________ [illegible]

Statement

Bankers Fire & Casualty
Insurance Company
[illegible], NORTH CAROLINA

Date [illegible]

Chapel Hill [illegible]
c/o [illegible]
Mr. [illegible]
Mr. [illegible]
Chapel Hill, North Carolina

[illegible]	[illegible]	[illegible]	
2/25/64	Appearance Bonds (12)	[illegible]	
3/11/64	" " [illegible]	[illegible]	
3/11/64	" " [illegible]	10.00	
3/18/64	" " [illegible]	[illegible]	
Paid on Account 4/8/64			500.00
	Total	$ [illegible]	$ [illegible]
	Due Company as of 4/13/64	[illegible]	4,[illegible].00
		$ 4,[illegible].00	$ 4,[illegible].00

LAW OFFICES OF
F. B. McKISSICK
213½ WEST MAIN STREET
DURHAM, NORTH CAROLINA 27701

OFFICE 682-8106
RESIDENCE 682-6576

APR 23 1964

CORE

April 21, 1964

Mr. Carl Rachlin, General Counsel
CONGRESS OF RACIAL EQUALITY
38 Park Row
New York 38

Re: Chapel Hill Demonstration Cases, Obstructing Streets and Roadways

Dear Carl:

I have attempted to contact you by phone on more than three occasions without any success. I talked with Jack Greenberg on two occasions and was able to reach him today. The present state of affairs in Chapel Hill is as follows:

1. An agreement has been made to try only the obstruction of the highway cases which are in process. Under the agreement, the students will enter a plea of nolo contendre and will be taxed with cost of court. Suspended sentences will be given. The length of the suspended sentences will be determined by number of arrests the students have had. In many instances, some students have been arrested as much as twenty-two (22) times. In the severe cases, some might have to serve time.

2. All other cases pending against the students are to be held in obeyance and eventually nol prossed at a suitable time by the solicitor. Presently, eighteen (18) kids have received suspended sentences and the court cost now amounts to $1,440. I have asked Jack Greenberg to pay the cost in these cases and he has agreed to do so. The court cost should be paid by Thursday.

3. It was further suggested that CORE would pay the court cost in the next batch of cases and that the three of us would have a conference regarding future arrangements for the handling of these cases. I advised Jack that I would be in New York on the weekend of May 1. It is possible that I could come on April 30 in order to allow for a day to discuss this matter in its entirety. Let me have your thinking in regard to the procedure that is now being followed.

With very kind regards, I am

Yours very truly,

F. B. McKissick

fbmck/edf

THE FOLLOWING PAGES ARE THE BEST AVAILABLE.

BANKERS FIRE & CASUALTY
INSURANCE COMPANY
INCORPORATED UNDER THE LAWS OF THE STATE OF [illegible]

April [illegible], 1964

Mr. F. B. McKissick, National Chairman
Mr. James B. Farmer, National Director
Mr. John Dunne, Field Representative
Congress of Racial Equality

Gentlemen:

At our recent Executive Committee Meeting held on April 17, 1964, management was requested to report on the status of bail bonds [illegible] by this company for demonstrators participating in protest activities originating in Chapel Hill, North Carolina. This report was indeed alarming and created considerable concern among members of the Committee upon their finding of the large number of bonds executed with so [illegible] amount of direct liability involved and several judgments [illegible] rendered for failure to appear requiring payment by us of $[illegible], together with the fact that proper attention has not been given [illegible] account regarding payment of the premium charges in connection [illegible] after many requests and promises by your local representatives to [illegible]. Actually, payment received totals only $1[illegible] on a [illegible] of $5700, including the last group of bonds executed [illegible], 1964.

At each instance of rendering this service, detail [illegible] executed by name of defendant was submitted with [illegible] but same was not forthcoming. A copy of our statement [illegible] the bonds signed and payments made is enclosed with a balance [illegible] of $4,[illegible] as of April 17, 1964.

There are still pending in Orange County [illegible] and upon trial may require additional [illegible] increase your obligation to us.

While our attitude is one of willingness to make available to your organization our service, we are also obligated as [illegible] a state supervised insurance company to conduct our business on a sound financial basis for the protection of all of our [illegible]. We cannot under the circumstances [illegible] of our relationship in [illegible]

Mr. F. B. McKissick, National Chairman
Mr. James B. Farmer, National Director
Mr. John Dunne, Field Representative
Congress on Racial Equality
Page 2

April 22, 1964

insist that you give immediate attention to the matters here discussed.

Management was instructed by the Executive Committee to advise you of their concern in the hope that you would recognize the seriousness of the matter and possibly prevent a situation under which we would be forced to decline the further execution of bonds under new arrests or give additional bond in cases now pending disposition by the courts. It is our wish that this difficulty can be resolved as early as possible and not create additional problems in the prosecution of your program.

Very sincerely yours,

BANKERS FIRE & CASUALTY INSURANCE COMPANY

Wm. Jay Walker, Jr.
Secretary

WJW:eak

file McKissick -
Chapel Hill

CORE Interoffice Memorandum

TO: Mr. James Farmer November 20, 1964

FROM: Carl Rachlin

CC: Mr. Gordon Carey, Mr. Marvin Rich

RE: Chapel Hill - Telephone conversations with Floyd McKissick and William Kunstler on November 19th

McKissick advised me that he had filed the necessary papers to perfect the appeal in four situations. In fact, we discussed this the day before in relationship to expenses Floyd had incurred in order to file the papers. In speaking to McKissick again yesterday he was very disturbed because he had shortly before speaking to me learned from one of the young defendants, a Harry Boyt, whose father has some executive capacity with SCLC, that Kunstler and Kinoy represented him. Floyd was upset because (a) he had already done all the work, including writing the brief and laying out the necessary expenses; (b) noone had the courtesy to tell him of this; and (c) if he had not perfected the appeal, the time would have elapsed and the penalty would have been incurred.

At Floyd's request I spoke to Kunstler and caught him at the SCEF office and told Kunstler Floyd's feelings. Kunstler told me that on or about September 29th, at some SCLC conference, Mr. Boyt, Sr. asked him to represent Junior. Kunstler advised me that he sent the request on to Phil Hirschkopf, who formerly was with the Law Students but is now associated with a firm in either Arlington or Alexandria, Virginia; but in view of what has happened, he would have Hirschkopf call Floyd and clarify the whole thing.

Of course, Floyd is concerned because a question could be raised concerning his appearing on behalf of somebody who may not have authorized him to go ahead. In view of problems the bar association has given Floyd in North Carolina this might be serious.

I called Floyd and passed this information on to him. Listening in on the conversation at his end was Carol Silver, a young law graduate who is assigned to Floyd's office, and she told Floyd and me on the telephone that she had spoken to Hirschkopf only yesterday about several matters and that to her it was clear from the context of the conversation that Hirschkopf presumably had not been advised that he was supposed to represent Boyt. In other words, if Floyd hadn't filed the papers, the right to appeal would have been lost.

CR:hdl

CORE - Congress of Racial Equality
38 Park Row, New York 38, New York
COrtlandt 7-6270

FOR IMMEDIATE RELEASE

ATTN: Marvin Rich and Jim Peck

ONE-YEAR JAIL TERMS FOR RIGHTS LEADERS IN CHAPEL HILL

Chapel Hill, N.C., May 21--Those designated by the prosecutor as leaders of the February 8th CORE mass demonstration against segregation here, were singled out by Judge Raymond Mallard for 1-year prison sentences.

They included John Dunne and Joseph Tieger, both CORE Task Force workers, Patrick Cusick and J.B. Henry. In sentencing Tieger, Judge Mallard characterized him as a participant in "an international conspiracy to overthrow the government."

Arthur Crist was sentenced to eight months, Louis Calhoun, Quinton Baker and Rosemary Ezra to six months and Roosevelt Atwater to four months. Four others got 10 days and approximately 90 were given suspended sentences ranging from six months up to five years with stipulations for "active probation." In addition to the prison sentences, fines were imposed, some ranging up to $500. Those with long sentences were in jail up to two weeks pending release on appeal.

The charges were "obstructing traffic" and "resisting arrest." As part of the February 8 demonstration, freedom marchers sat down on the pavement at the town's busiest intersection--Franklin and Columbia. Since the CORE campaign to complete desegregation of this college town started in Mid-December, over 550 nonviolent protestors have been arrested.

####

MSS. SEDFRE

CLANTON CASE - CORRESPONDENCE
1965

Box 35
Folder 12

State Historical Society of Wisconsin

Please Retain Original Order

r and Mrs Willard H Clanton
0 South 27th St Wyandanch L. I.
11798

10- 17-65.

s Farmer. I bought lots in
ch Long Island and paid for
have the deed. 10 months
ad Side Builders in
ma Long Island to build
which was finished in
at the Closing the builder
e had to pay to have the
led not the side walk in
our building the middle of
f. he said we couldn't
ermit unless we paid to have
led. we had a Lawyer at the
thought he was looking out
builder told us that he
o the job cheaper and told
w $800. or more on our mortgage.
told when we made arran-
build that our monthly dues
e $87.10 monthly. but by getting
ortgage on the house the pay-
np to $137.00 a month we haven't
mit but we moved in the month of
e still haven't got the deed
use. Mr Farmer we are so

2

worried. we can't sleep nights. The build
is sending men to annoy us telling
we have to pay to have the Street f
and he did not finish the hous
did not put any light in the ba
room and there's several thin
arent finished, seem like there's
some thing could be done t
us, we worked hard and put al
money we had in this house. pl
let me hear from you. I have
listened to you on the televisio
and I'm sure you can help us. even if
lose our house I hope other
people wouldn't go through what
are going through. if you ca
help us please investigate pe
are building houses and lo
them every day.

Sincerely

Mr and Mrs W. H. Clanton
10 S. 27th St
Wyandanch L. I. N.
11798

Mrs peg
to core Legal

October 25, 1965

Mr. & Mrs. Willard H. Clanton
10mS. 27th Street
Wyandanch, Long Island, New York 11798

Dear Mr. & Mrs. Clanton:

Mr. Farmer has asked me to reply to your recent letter to him.

Please tell me the name of your lawyer and his address, the name and address of the builder and the name and address of the one giving the mortgage money.

We will try to see if something can be done to help you.

Very truly yours,

CARL RACHLIN
General Counsel

CR/cs

Mr and Mrs Willard Clanton
10 S. 27th St
Wyandanch L.I. 11798
10-29-65

Dear Mr Carl Rachlin:

we received your letter inquiring about the names and addresses of my lawyer and builder, my Lawyer's name is Wilfred N Mais Office at 200 W 135th St New York City he was my Lawyer at the time of the building. the builder's name is Ronald parr 382 Rosevale ave Ronkonkoma Long Island name of Construction is Lido Construction. right after moving to Wyandanch I heard about Lawyer peter J. Newman also a colored Lawyer he said he could get our money back that the builder got from us to have the middle of the Street oiled, that was six months ago. but he never contacts us the only time we hear from him is when we go to his place, he said he would ask for the money, and if he could not get it, he would Sue but he never mentions the case to us any more, he has our Contract and other papers. if you could help us we would be very grateful. we can't sleep nights thinking about the predicament we're in

sincerely
Mr and Mrs Willard Clanton

NOV 2 1965

M and Mrs Willard Clanton
10 south 27th St
Wyandanch L. I. 1178

10 - 29 - 65

Dear Mr Rachlin,
I wrote Mr Farmer and recieved a Reply from you asking for the name of the
builder, and the Lawyer. I answered it Friday Oct 28th the
name of the bank that loan the money is Reliance Federal
Savings The closing was may 20th 1965 in Bethpage Long Island
Long Island Branch. but we mails our monthly mort-
gage Payments to Reliance Federal Savings 216-26
Jamaica Avenue Queens Village N.Y. 11428 we are
desperately in Help we are not young people and we
worked hard and invested our savings in this
house just to be lost to Lido Construction Co.
we paid for the lots 3 years ago we have the
deed, so we thought we would build. every
penny we worked for was put in this house
during the time of the building we would get bills claim-
ing we had to pay for water annalysis and
various things which we paid. we had Lawyer
Wilfred 71 Mais but he went along with every thing
the builder requested please try to help us if its possible
whatever happens will have to be soon because we have
this summons to appear in Court

Sincerely mr & mrs Willard Clanton
10 S 27th St Wyandanch L. I.

telephone 643-6562

11-27-65

Mr and Mrs Willard Clanton
10 S 27th St
Wyandanch L.I. 11798

NOV 29 1965

Dear Mr Rachlin,

I Wrote you sometime ago. telling of the many troubles we had with our builder You Wrote asking for the Lawyer's name and the Builder's name I sent it to you but haven't heard any more from you. I have listened to Mr Farmer and have watched him on T.V. and he seem to be such a wonderful fighter for Race I'm surprised, I haven't heard from him

Very Sincerely
Mr and Mrs
W. Clanton

Brooklyn CORE
UL-7-9200

volunteer hospital → Maimonides Hosp

18th & Ft Ham Pkwy
Brooklyn

34 Depts — no Negro heads

—

in charge of **159** people
(good man) Kent - immediate supervisor
(bastard) Peter Baglio = administrator

— damage —

Alfred E. Isser
280 E. 56th
Brook 3
EV-5-10154

Michael Kent - [illegible]
(Gambell) [illegible] Peter Baglio - hospital administrator
Dr. Irwin Cohn (Baglio's head)
(is getting rid of old personnel,
bringing in VA).

Mss 546 SEDFRE

Bryan Clemmons, Wingate White, & John Christian vs C.O.R.E., Dec. 1961 - Feb. 1964

[Legal Papers]

Box 35
Folder 13

State Historical Society of Wisconsin

Please Retain Original Order

CITY OF BATON ROUGE, EX REL
JOHN CHRISTIAN, MAYOR-PRESIDENT,
CITY OF BATON ROUGE

VS.

CONGRESS OF RACIAL EQUALITY,
ET AL

NO. 85,578

19th Judicial District Court

PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

TO Thomas Peete

residing in said Parish.

GREETING:

You are hereby summoned to comply with the demand contained in the petition of the plaintiff in the above entitled and numbered cause, a duly certified copy of which is hereto attached and to be herewith served, or file your answer or other pleading in the office of the Clerk of the 19th Judicial District Court, for said Parish, at the City of Baton Rouge, within fifteen (15) days after service hereof. Your failure to comply herewith will subject you to the penalty of entry of default judgment against you.

Witness the Honorable Judges of our said Court, at Baton Rouge, Louisiana, this 15th day of December, 1961.

(sgd) Nenie L. Palmer
Deputy Clerk of Said Court

A TRUE COPY this December 15th, 1961
Nenie L. Palmer
Deputy Clerk of Court

RULE NISI

CITY OF BATON ROUGE, EX REL
JOHN CHRISTIAN, MAYOR-PRESIDENT,
CITY OF BATON ROUGE

vs.

CONGRESS OF RACIAL EQUALITY, ET AL

No. 85,578

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE,
STATE OF LOUISIANA

To Thomas Peete

GREETING:

Pursuant to an order of the Honorable Court aforesaid, granted on the petition of the plaintiff in the above entitled and numbered cause, duly certified copies of said petition and order being herewith served, you are hereby ruled to show cause in said Court at 10:00 o'clock A.M., on the 26th day of December, 1961, why a preliminary writ of injunction in the form and substance of the temporary restraining order issued, should not issue herein, to be effective during the pendency of these proceedings.

Witness the Honorable Judges of our said Court, at Baton Rouge, Louisiana this 15th day of December, 1961.

(sgd) Nenie L. Palmer
Deputy Clerk of Court

A TRUE COPY this December 15th, 1961
Nenie L. Palmer
Deputy Clerk of Court

TEMPORARY RESTRAINING ORDER

CITY OF BATON ROUGE, EX REL JOHN CHRISTIAN, MAYOR-PRESIDENT, CITY OF BATON ROUGE	NO. 85,578
	19TH JUDICIAL DISTRICT COURT
VS.	PARISH OF EAST BATON ROUGE
CONGRESS OF RACIAL EQUALITY, ET AL	STATE OF LOUISIANA

TO Thomas Peete

GREETING:-

Pursuant to an order of the Honorable Court aforesaid, you are hereby enjoined and restrained and prohibited temporarily from continuing to violate L.S.A., R.S. 14:26, L.S.A., R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A., R.S. 14:103.1, as amended, by meeting and conspiring to violate the criminal statutes of this State and by violating L.S.A., R.S. 14:26, L.S.A., R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A. R.S. 14:103.1 as amended, by unlawfully picketing and unlawfully taking possession of private places of business when having been requested to leave and failing to do so, and by congregating with others on public streets and highways and upon public sidewalks, and in or around any free entrance to any place of business or public buildings and in failing and refusing to disperse and move on when ordered to do so by any law enforcement officer; and you are so enjoined and restrained for a period of ten (10) days from date hereof unless extended by this Court prior to expiration for good cause shown and the reasons therefor entered of record.

Witness the Honorable Judges of our said Court, at Baton Rouge, Louisiana, this 15th day of December, 1961.

(sgd) Nenie L. Palmer
Deputy Clerk of Court

A TRUE COPY this December 15th, 1961
Nenie L. Palmer
Deputy Clerk of Court

CITY OF BATON ROUGE, EX REL. : NO. 85578 DIV. ________
JOHN CHRISTIAN, MAYOR-
PRESIDENT, CITY OF BATON ROUGE :

VS. : 19TH JUDICIAL DISTRICT COURT

CONGRESS OF RACIAL EQUALITY AND :
ALL REPRESENTATIVES, PARTICU-
LARLY REV. B. ELTON COX, PATRICIA :
TATE, JEROME SMITH, RONNIE M. PARISH OF EAST BATON ROUGE
MOORE, WELDON J. ROUGEAU, JULIA :
AARON, DORIS CASTLE, DAVID
DENNIS, THOMAS PEETE AND ACIE :
BELTON [redacted]
: STATE OF LOUISIANA

PETITION

TO THE HONORABLE, THE NINETEENTH JUDICIAL DISTRICT COURT, WITHIN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

The petition of the City of Baton Rouge on the relation John Christian, Mayor-President, in his official capacity, respectfully represents unto this Honorable Court:

1.

That the defendants herein are Congress of Racial Equality, commonly believed to be a New York corporation, not authorized to do business in the State of Louisiana, and all of its agents, servants and employees, and particularly the following named members thereof: Rev. B. Elton Cox, Patricia Tate, Jerome Smith, Ronnie M. Moore, Weldon J. Rougeau, Julia Aaron, Doris Castle, David Dennis, Thomas Peete and Acie Belton, their agents, successors, deputies, servants and employees, [redacted] and all other persons acting in concert or conspiracy with these named defendants.

2.

That the defendant, Congress of Racial Equality, is a foreign corporation; that the defendants, Rev. B. Elton Cox, Patricia Tate, Jerome Smith, Ronnie M. Moore, Weldon J. Rougeau, Julia Aaron, Doris Castle, David Dennis, Thomas Peete and Acie Belton and all [redacted] are presently residing in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana.

3.

That on December 8 and December 9, 1961, the Congress of Racial Equality and the above specifically named members thereof conducted a so-called clinic in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, as shown by the attached agenda passed out at said meeting marked Exhibit "A", and at which said meeting the attending persons were instructed to violate certain criminal statutes of this State.

4.

That on the 15th day of December, 1961, as a direct result of the agitation and conspiracy committed on December 8 and 9, 1961, at the meeting sponsored by Congress of Racial Equality at a Church located on the corner of 14th and Convention Streets in the City of Baton Rouge, a mob of approximately 1,500 negroes assembled in front of the Court House of the City of Baton Rouge and began a demonstration; that a group of white people congregated across the street, and it became apparent that a grave situation existed because of the tension and shouting on the part of both crowds; that the Sheriff of the Parish of East Baton Rouge personally requested the Rev. B. Elton Cox, CORE representative and leader of the group, to move on and to disperse his group for the reason that a disturbance was then being caused; the said Cox did not comply with this request, and the request was ignored, whereupon it became necessary to disperse this group by the use of tear gas.

5.

That the defendant, Congress of Racial Equality, and others associated with them, are sponsoring, financing and encouraging John Doe and Mary Roe and others associated with them, [redacted], and particularly the individuals named herein, after publicizing their intent to do so, to congregate on the streets of the City of Baton Rouge in order to foment violence and to provoke breaches of the peace in and around the stores named on the attached handbill passed out, which is marked Exhibit "B" and "C", and the Court House of the City of Baton Rouge and the Municipal

3.

That on December 8 and December 9, 1961, the Congress of Racial Equality and the above specifically named members thereof conducted a so-called clinic in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, as shown by the attached agenda passed out at said meeting marked Exhibit "A", and at which said meeting the attending persons were instructed to violate certain criminal statutes of this State.

4.

That on the 15th day of December, 1961, as a direct result of the agitation and conspiracy committed on December 8 and 9, 1961, at the meeting sponsored by Congress of Racial Equality at a Church located on the corner of 14th and Convention Streets in the City of Baton Rouge, a mob of approximately 1,500 negroes assembled in front of the Court House of the City of Baton Rouge and began a demonstration; that a group of white people congregated across the street, and it became apparent that a grave situation existed because of the tension and shouting on the part of both crowds; that the Sheriff of the Parish of East Baton Rouge personally requested the Rev. B. Elton Cox, CORE representative and leader of the group, to move on and to disperse his group for the reason that a disturbance was then being caused; the said Cox did not comply with this request, and the request was ignored, whereupon it became necessary to disperse this group by the use of tear gas.

5.

That the defendant, Congress of Racial Equality, and others associated with them, are sponsoring, financing and encouraging John Doe and Mary Roe and others associated with them, [redacted], and particularly the individuals named herein, after publicizing their intent to do so, to congregate on the streets of the City of Baton Rouge in order to foment violence and to provoke breaches of the peace in and around the stores named on the attached handbill passed out, which is marked Exhibit "B" and "C", and the Court House of the City of Baton Rouge and the Municipal

Building of the City of Baton Rouge, and particularly to violate L. S. A., R.S. 14:26, L.S.A., R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A., R.S. 14:103.1, as amended.

6.

That this agitation on the part of Congress of Racial Equality and the named defendants herein, [redacted] John Doe and Mary Roe and others, have provoked incidents of violence at the Court House in the City of Baton Rouge and was calculated to, did and will continue to provoke future incidents of violence in and around said buildings, and which said incidents of violence have resulted in injury and damage to the City of Baton Rouge and the citizens thereof and the peace and tranquillity of this City.

7.

The acts of the defendants are willful, intentional, deliberate acts which the defendants have publicly announced to the newspaper, radio and TV Press media.

8.

That mover is informed and believes, and so believing, alleges that the defendants intend to continue these unlawful, malicious and willful acts and breaches of the peace and violations of the criminal statutes of this State; that the defendants will, unless restrained by the orders of the Court, continue to unlawfully sponsor, finance and encourage other persons to come into the City of Baton Rouge for the purpose of fomenting violence and provoking breaches of the peace in or near the Court House and Municipal Building in the City of Baton Rouge and to interfere with the lawful rights of the City of Baton Rouge in maintaining the peace and tranquillity of the same under the Constitution and laws of the State of Louisiana.

9.

That the defendants herein are and have been in violation of the above quoted statutes in that they and others acting in concert with them have unlawfully picketed and unlawfully taken possession of certain portions or places of business in the City of Baton Rouge.

10.

That in order to protect the City of Baton Rouge from the commission of further criminal offenses, it is necessary that this Honorable Court permanently restrain and enjoin the defendants, their agents, servants and employees from continuing to violate L.S.A., R.S. 14:26, L.S.A., R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A., R.S. 14:103.1, as amended, and conspiring to violate the Criminal laws of this State, and by unlawfully picketing and unlawfully taking possession of any portion of a private place of business and congregating unlawfully upon the public streets, sidewalks, passageways, etc. in the City of Baton Rouge, in violation of L.S.A., R.S. 14:103.1.

11.

That petitioner fears that the defendants will continue their unlawful activity, and, therefore, in order to protect the City of Baton Rouge from the commission of further criminal offenses by the defendants during the pendency of these proceedings, it is necessary that this Court issue a preliminary writ of injunction in the form and substance of the permanent injunction mentioned above, and that petitioner desires and is entitled to have a rule nisi issue to the defendants herein, ordering them to show cause on a day and at an hour to be fixed by this Honorable Court why such preliminary writ of injunction should not issue herein.

12.

Due to the fact that defendants' continued unlawful acts may cause irreparable injury to the City of Baton Rouge before notice can be served and a hearing had on petitioner's application for a preliminary injunction, it is necessary that a temporary restraining order in the form and substance of the injunction and preliminary injunction hereinabove mentioned issue herein.

13.

That since this is a proceeding brought by and on behalf of the City of Baton Rouge, no bond need be furnished in connection with the issuance of any such injunctions or restraining order.

WHEREFORE, petitioner prays that the defendants and each of them be duly served with a copy of this petition and cited to appear and answer the same in the form and manner required by law.

That a temporary restraining order issue herein directed to the defendants, restraining, enjoining and prohibiting them, their agents, servants or employees from continuing to violate L.S.A., R.S. 14:26, L.S.A, R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A., R.S. 14:103.1, as amended, by meeting and conspiring to violate the criminal statutes of this State and by violating L.S.A., R.S. 14:26, L.S.A., R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A., R.S. 14:103.1, as amended, by unlawfully picketing and unlawfully taking possession of private places of business when having been requested to leave and failing to do so, and by congregating with others on public streets and highways and upon public sidewalks and in or around any free entrance to any place of business or public buildings and in failing and refusing to disperse and move on when ordered to do so by any law enforcement officer.

That a rule nisi issue herein directed to the defendants, and each of them, commanding them to show cause on a day not less than two nor more than ten days from service hereof, why a preliminary injunction should not issue herein without bond, restraining and enjoining them, their agents, servants and employees from continuing to violate L.S.A., R.S. 14:26, L.S.A., R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A., R.S. 14:103.1, as amended, by meeting and conspiring to violate the criminal statutes of this State and by violating L.S.A., R.S. 14:26, L.S.A., R.S. 14:59, Paragraph 6, L.S.A., R.S. 14:100.1 and L.S.A., R.S. 14:103.1, as amended, by unlawfully picketing and unlawfully taking possession of private places of business when having been requested to leave and failing to do so, and by congregating with others on public streets and highways and upon public sidewalks and in or around any free entrance to any place of business or public buildings and in failing and refusing to disperse and move on when ordered to do so by any law enforcement officer.

That upon the trial of said rule, there be judgment in favor of the City of Baton Rouge and your relator and petitioner, granting said preliminary injunction as prayed for.

That upon final trial hereof, judgment be rendered in favor of petitioner and against defendants and each of them, perpetuating said preliminary writ of injunction and making it permanent in the form and substance hereinabove set forth.

Petitioner further prays for all orders necessary in the premises and for such additional relief as law, equity and the nature of the case may permit.

By:

R. GORDON KEAN
City-Parish Attorney
City of Baton Rouge
Parish of East Baton Rouge

SARGENT PITCHER, JR.
District Attorney of the Nineteenth Judicial District of Louisiana

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared

-----------------------------JOHN CHRISTIAN--------------------------

who, being by me first duly sworn, did depose and say:

That he is the duly elected and qualified Mayor-President of the City of Baton Rouge and Parish of East Baton Rouge; that the City of Baton Rouge on his relationship is the petitioner and that all of the facts and allegations therein contained are true and correct, except as to those made on information and belief, and as to them, he verily believes them to be true.

John Christian

SWORN TO AND SUBSCRIBED BEFORE ME, this 15th day of December, 1961.

NOTARY PUBLIC

FILED Dec 15 1961
(SIGNED) Gladys D. Brand
DY. CLERK
A TRUE COPY Dec 15 1961
Nenie L. Palmer
DY. CLERK

Direct Non-Violent Action Clinic
Sponsored by
The Baton Rouge Chapter of the Congress of Racial Equality

Friday, December 8, 1961

3:00 - 4:00 Registration of Participants
Patricia Tate - Registrar

4:00 - 5:00 Discussion on Organizational Structure of CORE
Rev. B. Elton Cox

5:00 - 6:00 Discussion on the History of CORE and the Gandhian Philosophy
Jerome Smith - Convener

6:00 - 6:30 Evening Snack

6:30 - 7:00 Break

7:00 Evening Program - Weldon J. Rougeau, Presiding

1. Invocation - Ronnie M. Moore
2. Introduction of National CORE, New Orleans CORE, and Baton Rouge CORE, Thomas Peete
3. Introduction of Speaker - Patricia Tate
4. Speaker's Address - Rev. B. Elton Cox
5. Announcements

Saturday, December 9, 1961

8:00 - 8:45 Registration
8:45 - 9:00 Assembly - Ronnie Moore
9:00 - 10:30 Workshops

1. Sit-Ins - Julia Aaron and Doris Castle
2. Picketing-Same as Above
3. Freedom Rides - David Dennis
4. Voter's Registration - Acie Belton
5. Jail Discipline - Jerome Smith
6. Discrimination of Job Opportunities - Rev. B. Elton Cox

10:30 - 12:00 HIT AND RUN DEMONSTRATIONS and SUMMARIES OF WORKSHOPS

12:00 - 1:30 Reports of Various Groups involved in Demonstrations and comments by advisors

1:30 - 2:30 Lunch

2:30 - 3:00 Briefing on Selective Buying - B.R. CORE'S Project

3:00 - 4:00 Distribution of circulars

4:00 - 5:00 Statements-Clinic Evaluation - Proposals
Resolutions (Final Assembly - Ronnie Moore)

Ex 'A'

Ex 'C'

"ACTION SUCCEEDS NEGOTIATION"

SELECTIVE BUYING

Motto: The Negroes of today are citizens of dignity, sacrifice, and determination. We believe that time is the excuse of the past, but action is our demand of the present. Equality and freedom are our merits of slavery, military service, and American citizenship. We want our rights without delay.

DON'T BUY AT THESE STORES:

(1) KRESS
(2) GOUDCHAUX'S
(3) F. W. WOOLWORTH
(4) WELSH & LEVY'S
(5) McCRORY'S
(6) SEARS
(7) HOLMES
(8) THREE SISTERS
(9) J. C. PENNEY
(10) ROSENFIELD'S
(11) SHOPPER'S FAIR
(12) MONTGOMERY WARD

GOALS: I. Better Job Opportunities
II. Desegregation of Facilities

These goals can be accomplished if you refuse to make purchases from the above stores. Cancel your charge accounts today or as soon as possible. Discrimination cannot be tolerated any longer. Use your dollar as a weapon against segregation. DON'T BUY DUAL CITIZENSHIP.

THE BATON ROUGE CHAPTER OF THE CONGRESS OF RACIAL EQUALITY

Ronnie Malcolm Moore, Chairman
Weldon Rougeau, Vice Chairman
Patricia Tate, Secretary
1955 Fairchild Street
Phone EL. 7-8048
Baton Rouge, Louisiana
Willie Bradford, Treasurer

SUPPORT AND/OR JOIN CORE TODAY

Ex 'B'

To: THE NEGRO CITIZENS OF BATON ROUGE AND OTHER RESIDENTS OF EAST BATON ROUGE PARISH

Do You Want Freedom?

Freedon is not a gift, but freedom is a merit that is acquired only through determination and sacrifice. We must be determined not to accept RACIAL DISCRIMINATION and SOUTHERN JUSTICE any longer.

To promote our stride for equality, we have been negotiating with the following downtown merchants as to (1) BETTER JOB OPPORTUNITIES, and (2) DESEGREGATION OF FACILITIES:

(1) KRESS
(2) GOUDCHAUX'S
(3) F. W. WOOLWORTH
(4) WELSH & LEVY'S
(5) McCRORY'S
(6) SEARS
(7) HOLMES
(8) THREE SISTERS
(9) J. C. PENNEY
(10) ROSENFIELD'S
(11) SHOPPER'S FAIR
(12) MONTGOMERY WARD

The evil of segregation can be conquered through "SELECTIVE BUYING."

Since we are aware of the fact that the merchants of the forestated stores are dependent upon the Negroes' dollar for a prosperous business, we are appealing to you not to buy at these stores if we cannot achieve our goal of equality in employment and facilities within the next few days.

Again we appeal to you: Don't Let Your Dollars Buy Discrimination!!!!!

THE BATON ROUGE CHAPTER OF THE CONGRESS OF RACIAL EQUALITY

To join or financially support CORE contact:

MISS PATRICIA A. TATE, Secretary
1955 Fairchild Street
Baton Rouge, Louisiana
ELgin 7-8048

CITY OF BATON ROUGE, EX REL.
JOHN CHRISTIAN, MAYOR-
PRESIDENT, CITY OF BATON ROUGE

NO. 85,578 DIV. ___________

VS.

19TH JUDICIAL DISTRICT COURT

CONGRESS OF RACIAL EQUALITY AND
ALL REPRESENTATIVES, PARTICU-
LARLY REV. B. ELTON COX, PATRICIA
TATE, JEROME SMITH, RONNIE M.
MOORE, WELDON J. ROUGEAU, JULIA
AARON, DORIS CASTLE, DAVID
DENNIS, THOMAS PEETE AND ACIE
BELTON [redacted]

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

TEMPORARY RESTRAINING ORDER

Considering the verified pleadings filed herein and the documents thereto attached, and the Court being satisfied from the specific facts therein appearing, that immediate and irreparable injury and loss and damage will result to the City of Baton Rouge, Parish of East Baton Rouge, by virtue of the continued unlawful activity on the part of the defendants before notice can be served and a hearing had on the plaintiff's application for a preliminary injunction:

IT IS ORDERED by the Court that the defendants, Congress of Racial Equality and all representatives, particularly Rev. B. Elton Cox, Patricia Tate, Jerome Smith, Ronnie M. Moore, Weldon J. Rougeau, Julia Aaron, Doris Castle, David Dennis, Thomas Peete and Acie Belton [redacted] be, and they are hereby duly restrained, enjoined and prohibited from continuing to violate L. S. A., R. S. 14:26, L. S. A., R. S. 14:59, Paragraph 6, L. S. A., R. S. 14:100.1 and L. S. A., R. S. 14:103.1, as amended, by meeting and conspiring to violate the criminal statutes of this State and by violating L. S. A., R. S. 14:26, L. S. A., R. S. 14:59, Paragraph 6, L. S. A., R. S. 14:100.1 and L. S. A., R. S. 14:103.1, as amended, by unlawfully picketing and unlawfully taking possession of private places of business when having been requested to leave and failing to do so, and by congregating with others on public streets and highways and upon public sidewalks, and in or around any free entrance to any place of business or public buildings and in failing and refusing to disperse and move on when ordered to do so by any law enforcement officer.

This temporary restraining order shall issue without bond and shall expire at the end of ten days from the date hereof unless extended by this Court prior to its expiration for good cause shown and the reasons therefor entered of record herein.

IT IS FURTHER ORDERED by this Court that each of the above named defendants do show cause before this Court on the 26th day of December, 1961, at the hour of 10:00 A.M. why a preliminary writ of injunction in the form and substance of the above temporary restraining order should not issue herein, to be effective during the pendency of these proceedings, and that on the hearing of said rule proof may be adduced by verified pleadings, supporting affidavits, or by proof as in ordinary cases, or by any or all of these methods, at the election of either respective parties litigant.

THIS ORDER SIGNED in my Office in the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, this 15th day of December, 1961, at the hour of Seven o'clock 7:00 P.M.

s/ Fred A. Blanche, Jr.
s/ C. A. Barnett
s/ Fred S. LeBlanc
JUDGE, 19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

FILED Dec. 15 19 61
(SIGNED) Gladys D. Biard
BY CLERK
A TRUE COPY Dec. (15) 19 61
Renie L Palmer
BY. CLERK

THE UNITED STATES OF AMERICA
DISTRICT COURT OF THE UNITED STATES
EASTERN DISTRICT OF LOUISIANA
(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, THE LATTER IN HIS OFFICIAL CAPACITY AS MAYOR-PRESIDENT, AND AS SUCH MAYOR OF THE CITY OF BATON ROUGE, LOUISIANA,	:	CIVIL ACTION FILE NO. _________
Plaintiffs,	:	NOTICE OF MOTION FOR PRELIMINARY INJUNCTION
VS.	:	
CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,	:	
Defendants.	:	

. . . .

TO: The Congress of Racial Equality, John Doe, and Mary Doe

Please take notice that the undersigned will bring the attached motion for a preliminary injunction on for hearing before the United States District Court (Baton Rouge Division) for the Eastern District of Louisiana, United States Court House, Baton Rouge, Louisiana, at 10:00 o'clock A.M. on the 4th day of ~~December, 1961~~ January, 1962, or as soon thereafter as counsel can be heard.

BY ATTORNEYS:

R. Gordon Kean, Jr., Parish Attorney

John V. Parker, Asst. Parish Attorney

Sargent Pitcher, Jr., District Attorney

John F. Ward, Jr., Asst. District Attorney

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and :
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT, : CIVIL ACTION
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA, : FILE NO. ________

Plaintiffs, : MOTION FOR TEMPORARY RESTRAINING ORDER

VS. :

CONGRESS OF RACIAL EQUALITY, JOHN DOE:
and MARY DOE,
:
Defendants.
:

. . . .

The plaintiffs move this Honorable Court for the issuance of a temporary restraining order without notice, temporarily restraining the defendants, their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them, who receive actual notice of order by personal service or otherwise, from continuing to sponsor, finance or encourage unlawful picketing in the City of Baton Rouge, from engaging or participating in any unlawful congregating or marching in the streets and other public ways of the City of Baton Rouge, Louisiana, from conspiring, encouraging or participating in any boycott in restraint of trade, or from doing any other act designed to provoke breaches of the peace or from doing any act in violation of the provisions of L.R.S. 14:59, L.R.S. 14:16.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103, L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985, and U.S.C.A. Title 15, Section 1, et seq.

As appears from the verified complaint, defendants will, unless restrained by order of this Court, cause immediate and irreparable injury, loss and damage to the plaintiffs, for which plaintiffs have no adequate remedy at law, before notice can be served and a hearing had thereon.

BY ATTORNEYS:

R. Gordon Kean, Jr., Parish Attorney

John V. Parker, Asst. Parish Attorney

Sargent Pitcher, Jr., District Attorney

John F. Ward, Jr., Asst. District Attorney

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and :
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICAL CAPACITY AS MAYOR-PRESIDENT, : CIVIL ACTION
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA, : FILE NO. 624

Plaintiffs, : COMPLAINT

VS. :

CONGRESS OF RACIAL EQUALITY, JOHN DOE :
and MARY DOE,
:
Defendants.
:

. . . .

TO THE HONORABLE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION:

Comes now Bryan Clemmons, an adult resident citizen of the City of Baton Rouge, Louisiana, Sheriff of the Parish of East Baton Rouge, Louisiana; Wingate White, an adult resident citizen of the City of Baton Rouge, Louisiana, Chief of the Police Department of the City of Baton Rouge, Louisiana; and John Christian, Mayor-President, and as such Mayor of the municipal corporation designated as the City of Baton Rouge, Louisiana, a municipal corporation under and by virtue of the laws of the State of Louisiana, and complain of the Congress of Racial Equality, a corporation incorporated under the laws of the State of New York, and John Doe and Mary Doe, whose exact names and addresses are unknow to the plaintiffs, but who are citizens of the United States and non-residents of the State of Louisiana, and for cause of complaint would show:

1.

A(2)

That jurisdiction of this action is vested in this Court under Title 28 of U. S. Code Annotated, Sections 1332 and 1343.

?

2.

That defendant, Congress of Racial Equality and others associated with said defendant are sponsoring, financing and encouraging John Doe and Mary Doe and others to come into the City of Baton Rouge, after publicizing their intention so to do, in order to ferment violence, to provoke breaches of the peace and other law violations, in and around the downtown business district and other public areas of the City of Baton Rouge, Louisiana, including but not limited to, the Parish Courthouse, Municipal Building, and public streets and ways of the said City of Baton Rouge in the vicinity of and leading to these public buildings.

lock up
(D K o I)
of disperse

3.

This agitation on the part of the defendant, as well as John Doe and Mary Doe and others acting in concert with them, has created situations in which large numbers of individuals and citizens have congregated on or used the public street and ways, contrary to the laws of the State of Louisiana and of the United States, all designed to provoke incidents of violence and breaches of peace, now and in the future, unless the defendants are restrained from this agitation; that pursuant to meetings held for that purpose, defendants have encouraged and are encouraging others to conspire with them to violate the laws of the State of Louisiana and of the United States, namely L.R.A. 14:59, L.R.S. 14:63.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103, L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985, and U.S.C.A. Title 15, Section 1 et seq.

lock up.
(DKoT)

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obstruct public passage

Crim mischief

contrib to delinq minors

Crim trespass

4.

Specifically, the actions of these defendants and others acting in concert with them, has resulted in the obstruction and complete blockage of certain public streets and ways of the City of Baton Rouge, thereby denying and depriving plaintiffs as individual citizens of the State of Louisiana and of the United States of America of their civil rights, including the right to freely use the public streets and ways without interference and hinderance; and in addition, these acts on the part of the defendants, and others in concert with them, are such as to hinder plaintiffs in their

?

Disturb peace
(? new)

lock
up
(DKoT)

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official capacities as constituted authorities of the Parish of East Baton Rouge, Louisiana, and of the State of Louisiana, and of the City of Baton Rouge, Louisiana, from giving or securing to all persons within said State, Parish and City the equal protection of the laws, including the equal right of all the citizens to use the public ways of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, in a normal, peaceful and customary manner, all of which is in violation of the provisions of Title 42, Section 1985(3) of U. S. Code Annotated.

5.

The plaintiffs further show that these unlawful acts of the defendants, and of others acting in concert with them, have required that the entire Police Department of the City of Baton Rouge, Louisiana, and the entire Sheriff's Department of the Parish of East Baton Rouge, Louisiana, be called out in order to maintain peace and order and to avoid violence and breaches of the peace; that even with the presence of these police officers, the activities of the defendants, and others acting in concert with them, has been such as to block off completely multiple public streets, and prevent the free and normal access to and from public and private buildings within the downtown and other areas of the City of Baton Rouge, Louisiana.

lock up

6.

Plaintiffs further show that the defendants, and others acting in concert with them, conspired together for the purpose of restraining trade, all in violation of the provisions of the U.S.C.A. Title 15, Section 1 et seq.; that these acts of conspiracy and restraint of trade have consisted, among other things, in the issuance of leaflets urging members of the Negro race to withhold their patronage from certain stores designated in said leaflets, and the actual placing of pickets in front of these designated stores, said pickets carrying signs urging members of the Negro race not to patronize the stores being so picketed, in congregating in large numbers in the downtown business district of the City of Baton Rouge, Louisiana, in such a manner as to intimidate other persons desirous of trading with merchants and

Lock up

businesses situated in said area, and in urging others to generally violate the above mentioned laws of the State of Louisiana and to act contrary to and in disregard of the orders of the duly constituted authorities, all in such a manner as to intimidate and discourage all persons, both colored and white, from trading or shopping in the downtown area of the City of Baton Rouge.

7.

lock up

Plaintiffs show that sometime prior to Friday, December 8th, 1961, the defendants, and others acting in concert with them, addressed letters to twelve downtown merchants and businesses to the effect that unless certain changes in store customs and policies were immediately made, action would be taken to compel such changes in customs and policies, a copy of one of said letters is annexed hereto as Exhibit A.

8.

lock up

At the same time, defendants issued certain circulars which were circulated throughout certain areas of the City of Baton Rouge, Louisiana, designed to effect a boycott of the several stores to whom the above described letter had been sent, a copy of said circular annexed hereto as Exhibit B.

9.

lock up

Commencing on Monday and Tuesday, December 11th and 12th, respectively, defendants, and others acting in concert with them, commenced to establish pickets in front of the several stores to whom the letters had been sent, the pickets carrying signs urging that these stores be boycotted, all pursuant to the threat which had been contained, or impliedly contained, in the letter addressed to the twelve stores sometime prior to Friday, December 8th.

10.

lock up

On Wednesday, December 13th, these pickets were warned that they were in violation of the law, and public notice was given by the District Attorney, the Parish Attorney, the Chief of Police and the Sheriff to the effect that any continued violations of the law would be prosecuted.

11.

lock up

off [illegible]

Despite this warning by the duly constituted and responsible authorities of the City and Parish, and despite urgings by these said duly constituted authorities that no further violations of the law take place, defendants, and others acting in concert with them, nonetheless, again on Thurdsay, December 14th, 1961, continued to picket the several stores to whom letters had been sent and to block and obstruct the sidewalks of the City of Baton Rouge, all in violation of the provisions of Title 14, Section 100.1 of the Revised Statutes of the State of Louisiana. Because of these violations of the law, certain of the picketing individuals were arrested.

12.

lock up

off [illegible]

On Friday, December 15th, apparently in protest of the legal arrest of these parties, and despite the fact these arrests had been legally made for violations of laws of the State of Louisiana, defendants, and others acting in concert with them organized a mass movement, consisting of approximately 1,500 or more persons, and directed against the downtown areas of the City of Baton Rouge, Louisiana; despite requests that these persons and parties cease their unlawful activities, defendants and others in concert with them unlawfully blocked public streets and ways of the City and Parish in such a manner as to hinder and obstruct the free and normal use of these public streets and ways, and despite requests by the Sheriff of the Parish of East Baton Rouge, Louisiana, acting in his lawful authority, that the congregation of parties and persons move on, one of the officers of the defendant corporation nonetheless refused to move on and refused to request that the other persons acting in concert with him move on, as a result of which it became necessary to disperse the crowd in order to prevent further violations of the law, and resulting violence and disorder.

13.

The acts of the defendants are willful, intention, deliberate acts which defendants have publically announced to the newspaper, radio and television press media that they intend to continue. The defendants will, unless restrained by order of this Court, continue to unlawfully sponsor, finance and encourage other persons to come to the downtown area of the City of Baton Rouge, and to congregate and march on the public streets and ways in violation of the laws of the State of Louisiana and orders of the duly constituted authorities of the City and Parish, and the said defendants will continue to ferment violence and other acts likely to constitute breaches of the peace, in obstruction to and interference with the lawful rights of the plaintiffs and all of the citizens and persons of the City of Baton Rouge guaranteed these rights under the Constitution and laws of the United States of America and the State of Louisiana.

14.

Plaintiffs have no adequate remedy at law.

15.

Because unlawful acts, such as breaches of the peace, and agitation likely to cause violence and disruptancy of the public peace will cause immediate and irreparable injury to plaintiffs, and before notice can be served and a hearing had on plaintiffs' application for an injunction, it is necessary that a temporary restraining order in the form and substance of the said injunction issue herein.

WHEREFORE, plaintiffs pray that this Honorable Court permanently enjoin the defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, from continuing to unlawfully sponsor, finance or encourage unlawful picketing in the downtown area of the City of Baton Rouge, from engaging or participating in any unlawful congregating or marching in the streets and other public ways of the City of Baton Rouge, Louisiana, from conspiring, encouraging or participating in any boycott in restrain of trade, or from doing any other act for the purpose of provoking breaches of the peace and from continuing to violate the provisions of L.R.A. 14:59, L.R.S. 14:63.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103, L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985 and U.S.C.A. Title 15, Section 1 et seq.

Plaintiffs pray for such further relief as the interest of justice may require.

BY ATTORNEYS,

R. Gordon Kean, Jr., Parish Attorney

John V. Parker, Assistant Parish Attorney

Sargent Pitcher, District Attorney

John F. Ward, Jr., Assistant District Attorney

INFORMATION FOR SERVICE:

SERVE:

Congress of Racial Equality and all representatives, particularly Rev. B. Elton Cox, Patricia Tate, Jerome Smith, Ronnie M. Moore, Weldon J. Rougeau, Thomas Peete and Willie Bradford.

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, who being first duly sworn did depose and say that the matters, facts and things contained in the foregoing complaint are true as therein stated.

S/ Bryan Clemmons

S/ Wingate M. White

S/ John Christian

SWORN TO AND SUBSCRIBED BEFORE ME, This the 15th day of December, 1961.

S/ John V. Parker
NOTARY PUBLIC

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

MISCELLANEOUS

BRYAN CLEMMONS, WINGATE WHITE and :
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT, :
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA, :

Plaintiffs, :

VS. :

CONGRESS OF RACIAL EQUALITY, JOHN DOE:
and MARY DOE,
:
Defendants.
:

~~CIVIL ACTION~~

FILE NO. 624

TEMPORARY RESTRAINING ORDER

. . . .

Whereas, in the above-named cause it has been made to appear by the verified complaint filed herein, which was on this 15th day of December, 1961, presented to the Honorable E. Gordon West, Judge of the United States District Court for the Eastern District of Louisiana, that a restraining order preliminary to hearing upon motion for a preliminary injunction should issue, without notice because immediate and irreparable injury, loss or damage will result to the plaintiffs before notice can be served and a hearing had thereon, in that the unlawful acts and agitation on the part of the defendant as well as John Doe and Mary Doe and others acting in consert with them has created situations in which large numbers of individuals and citizens have congregated on and used the public streets and ways contrary to the laws of the State of Louisiana and of the United States all designed to provoke incidents of violence and breaches of the peace.

Notice and a hearing before entering a temporary restraining order should not be required because such unlawful acts, breaches of the peace and agitation is likely to cause violence and disruptancy of the public peace

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resulting in bodily injury to large numbers of persons and because of the wide publicity being given to such actions, said actions will continue to occur during such time as would be required for the giving of notice.

Now, therefore, on motion of the plaintiffs

It is ordered that the defendant, the Congress of Racial Equality, and John Doe and Mary Doe and each of them and their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, be and they are hereby enjoined from continuing to sponsor, finance or encourage unlawful picketing in the City of Baton Rouge, from engaging or participating in any unlawful congregating or marching in the streets and other public ways of the City of Baton Rouge, Louisiana, from conspiring, encouraging or participating in any boycott in restraint of trade, or from doing any other act designed to provoke breaches of the peace, or from doing any act in violation of the provisions of L.R.S. 14:49, L.R.S. 14:16.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103, L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985, and U.S.CA. Title 15, Section 1, et seq.

picketing
marching

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Issued at 7:15 o'clock P.M. this 15th day of December, 1961.

s/ E. Gordon West
District Judge

CLERK'S OFFICE
A TRUE COPY
DEC 15 1961
F.M. Woody
Deputy Clerk, United States District Court
Eastern District of Louisiana

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THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

MISCELLANEOUS

BRYAN CLEMMONS, WINGATE WHITE and :
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT, :
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA, :

Plaintiffs, :

VS. :

CONGRESS OF RACIAL EQUALITY, JOHN DOE:
and MARY DOE,
:
Defendants.
:

~~CIVIL ACTION~~

FILE NO. 624

TEMPORARY RESTRAINING ORDER

. . . .

Whereas, in the above-named cause it has been made to appear by the verified complaint filed herein, which was on this 15th day of December, 1961, presented to the Honorable E. Gordon West, Judge of the United States District Court for the Eastern District of Louisiana, that a restraining order preliminary to hearing upon motion for a preliminary injunction should issue, without notice because immediate and irreparable injury, loss or damage will result to the plaintiffs before notice can be served and a hearing had thereon, in that the unlawful acts and agitation on the part of the defendant as well as John Doe and Mary Doe and others acting in consert with them has created situations in which large numbers of individuals and citizens have congregated on and used the public streets and ways contrary to the laws of the State of Louisiana and of the United States all designed to provoke incidents of violence and breaches of the peace.

Notice and a hearing before entering a temporary restraining order should not be required because such unlawful acts, breaches of the peace and agitation is likely to cause violence and disruptancy of the public peace resulting in bodily injury to large numbers of persons and because of the wide publicity being given to such actions, said actions will continue to occur during such time as would be required for the giving of notice.

Now, therefore, on motion of the plaintiffs

It is ordered that the defendant, the Congress of Racial Equality, and John Doe and Mary Doe and each of them and their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, be and they are hereby enjoined from continuing to sponsor, finance or encourage unlawful picketing in the City of Baton Rouge, from engaging or participating in any unlawful congregating or marching in the streets and other public ways of the City of Baton Rouge, Louisiana, from conspiring, encouraging or participating in any boycott in restraint of trade, or from doing any other act designed to provoke breaches of the peace, or from doing any act in violation of the provisions of L.R.S. 14:49, L.R.S. 14:16.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103, L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985, and U.S.CA. Title 15, Section 1, et seq.

picketing
marching

Issued at 7:15 o'clock P.M. this 15th day of December, 1961.

S/ E. Gordon West
District Judge

CLERK'S OFFICE
A TRUE COPY
DEC 15 1961
F. M. Woody
Deputy Clerk, United States District Court
Eastern District of Louisiana

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THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, THE LATTER IN HIS OFFICAL CAPACITY AS MAYOR-PRESIDENT, AND AS SUCH MAYOR OF THE CITY OF BATON ROUGE, LOUISIANA,	:	CIVIL ACTION FILE NO. 624
Plaintiffs,	:	COMPLAINT
VS.	:	
CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,	:	
Defendants.	:	

. . . .

TO THE HONORABLE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION:

Comes now Bryan Clemmons, an adult resident citizen of the City of Baton Rouge, Louisiana, Sheriff of the Parish of East Baton Rouge, Louisiana; Wingate White, an adult resident citizen of the City of Baton Rouge, Louisiana, Chief of the Police Department of the City of Baton Rouge, Louisiana; and John Christian, Mayor-President, and as such Mayor of the municipal corporation designated as the City of Baton Rouge, Louisiana, a municipal corporation under and by virtue of the laws of the State of Louisiana, and complain of the Congress of Racial Equality, a corporation incorporated under the laws of the State of New York, and John Doe and Mary Doe, whose exact names and addresses are unknow to the plaintiffs, but who are citizens of the United States and non-residents of the State of Louisiana, and for cause of complaint would show:

1.

A(1)

That jurisdiction of this action is vested in this Court under Title 28 of U. S. Code Annotated, Sections 1332 and 1343.

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2.

lack info (D K o I) of [illegible]

That defendant, Congress of Racial Equality and others associated with said defendant are sponsoring, financing and encouraging John Doe and Mary Doe and others to come into the City of Baton Rouge, after publicizing their intention so to do, in order to ferment violence, to provoke breaches of the peace and other law violations, in and around the downtown business district and other public areas of the City of Baton Rouge, Louisiana, including but not limited to, the Parish Courthouse, Municipal Building, and public streets and ways of the said City of Baton Rouge in the vicinity of and leading to these public buildings.

3.

lacking (DKoI)

This agitation on the part of the defendant, as well as John Doe and Mary Doe and others acting in concert with them, has created situations in which large numbers of individuals and citizens have congregated on or used the public street and ways, contrary to the laws of the State of Louisiana and of the United States, all designed to provoke incidents of violence and breaches of peace, now and in the future, unless the defendants are restrained from this agitation; that pursuant to meetings held for that purpose, defendants have encouraged and are encouraging others to conspire with them to violate the laws of the State of Louisiana and of the United States, namely L.R.A. 14:59, L.R.S. 14:63.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103, L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985, and U.S.C.A. Title 15, Section 15 et seq.

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obstruct public passage

Crim mischief

Crim trespass

Contrib to deling minors

Disturb peace (new)

4.

Specifically, the actions of these defendants and others acting in concert with them, has resulted in the obstruction and complete blockage of certain public streets and ways of the City of Baton Rouge, thereby denying and depriving plaintiffs as individual citizens of the State of Louisiana and of the United States of America of their civil rights, including the right to freely use the public streets and ways without interference and hinderance; and in addition, these acts on the part of the defendants, and others in concert with them, are such as to hinder plaintiffs in their

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official capacities as constituted authorities of the Parish of East Baton Rouge, Louisiana, and of the State of Louisiana, and of the City of Baton Rouge, Louisiana, from giving or securing to all persons within said State, Parish and City the equal protection of the laws, including the equal right of all the citizens to use the public ways of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, in a normal, peaceful and customary manner, all of which is in violation of the provisions of Title 42, Section 1985(3) of U. S. Code Annotated.

5.

The plaintiffs further show that these unlawful acts of the defendants, and of others acting in concert with them, have required that the entire Police Department of the City of Baton Rouge, Louisiana, and the entire Sheriff's Department of the Parish of East Baton Rouge, Louisiana, be called out in order to maintain peace and order and to avoid violence and breaches of the peace; that even with the presence of these police officers, the activities of the defendants, and others acting in concert with them, has been such as to block off completely multiple public streets, and prevent the free and normal access to and from public and private buildings within the downtown and other areas of the City of Baton Rouge, Louisiana.

lock up

6.

Plaintiffs further show that the defendants, and others acting in concert with them, conspired together for the purpose of restraining trade, all in violation of the provisions of the U.S.C.A. Title 15, Section 1 et seq.; that these acts of conspiracy and restraint of trade have consisted, among other things, in the issuance of leaflets urging members of the Negro race to withhold their patronage from certain stores designated in said leaflets, and the actual placing of pickets in front of these designated stores, said pickets carrying signs urging members of the Negro race not to patronize the stores being so picketed, in congregating in large numbers in the downtown business district of the City of Baton Rouge, Louisiana, in such a manner as to intimidate other persons desirous of trading with merchants and look up

businesses situated in said area, and in urging others to generally violate the above mentioned laws of the State of Louisiana and to act contrary to and in disregard of the orders of the duly constituted authorities, all in such a manner as to intimidate and discourage all persons, both colored and white, from trading or shopping in the downtown area of the City of Baton Rouge.

7.

look up

Plaintiffs show that sometime prior to Friday, December 8th, 1961, the defendants, and others acting in concert with them, addressed letters to twelve downtown merchants and businesses to the effect that unless certain changes in store customs and policies were immediately made, action would be taken to compel such changes in customs and policies, a copy of one of said letters is annexed hereto as Exhibit A.

8.

look up

At the same time, defendants issued certain circulars which were circulated throughout certain areas of the City of Baton Rouge, Louisiana, designed to effect a boycott of the several stores to whom the above described letter had been sent, a copy of said circular annexed hereto as Exhibit B.

9.

look up

Commencing on Monday and Tuesday, December 11th and 12th, respectively, defendants, and others acting in concert with them, commenced to establish pickets in front of the several stores to whom the letters had been sent, the pickets carrying signs urging that these stores be boycotted, all pursuant to the threat which had been contained, or impliedly contained, in the letter addressed to the twelve stores sometime prior to Friday, December 8th.

10.

look up

On Wednesday, December 13th, these pickets were warned that they were in violation of the law, and public notice was given by the District Attorney, the Parish Attorney, the Chief of Police and the Sheriff to the effect that any continued violations of the law would be prosecuted.

11.

lock ups

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disperse

Despite this warning by the duly constituted and responsible authorities of the City and Parish, and despite urgings by these said duly constituted authorities that no further violations of the law take place, defendants, and others acting in concert with them, nonetheless, again on Thurdsay, December 14th, 1961, continued to picket the several stores to whom letters had been sent and to block and obstruct the sidewalks of the City of Baton Rouge, all in violation of the provisions of Title 14, Section 100.1 of the Revised Statutes of the State of Louisiana. Because of these violations of the law, certain of the picketing individuals were arrested.

12.

lock ups

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On Friday, December 15th, apparently in protest of the legal arrest of these parties, and despite the fact these arrests had been legally made for violations of laws of the State of Louisiana, defendants, and others acting in concert with them organized a mass movement, consisting of approximately 1,500 or more persons, and directed against the downtown areas of the City of Baton Rouge, Louisiana; despite requests that these persons and parties cease their unlawful activities, defendants and others in concert with them unlawfully blocked public streets and ways of the City and Parish in such a manner as to hinder and obstruct the free and normal use of these public streets and ways, and despite requests by the Sheriff of the Parish of East Baton Rouge, Louisiana, acting in his lawful authority, that the congregation of parties and persons move on, one of the officers of the defendant corporation nonetheless refused to move on and refused to request that the other persons acting in concert with him move on, as a result of which it became necessary to disperse the crowd in order to prevent further violations of the law, and resulting violence and disorder.

13.

The acts of the defendants are willful, intention, deliberate acts which defendants have publically announced to the newspaper, radio and television press media that they intend to continue. The defendants will, unless restrained by order of this Court, continue to unlawfully sponsor, finance and encourage other persons to come to the downtown area of the City of Baton Rouge, and to congregate and march on the public streets and ways in violation of the laws of the State of Louisiana and orders of the duly constituted authorities of the City and Parish, and the said defendants will continue to ferment violence and other acts likely to constitute breaches of the peace, in obstruction to and interference with the lawful rights of the plaintiffs and all of the citizens and persons of the City of Baton Rouge guaranteed these rights under the Constitution and laws of the United States of America and the State of Louisiana.

14.

Plaintiffs have no adequate remedy at law.

15.

Because unlawful acts, such as breaches of the peace, and agitation likely to cause violence and disruptancy of the public peace will cause immediate and irreparable injury to plaintiffs, and before notice can be served and a hearing had on plaintiffs' application for an injunction, it is necessary that a temporary restraining order in the form and substance of the said injunction issue herein.

WHEREFORE, plaintiffs pray that this Honorable Court permanently enjoin the defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, from continuing to unlawfully sponsor, finance or encourage unlawful picketing in the downtown area of the City of Baton Rouge, from engaging or participating in any unlawful congregating or marching in the streets and other public ways of the City of Baton Rouge, Louisiana, from conspiring, encouraging or participating in any boycott in restrain of trade, or from doing any other act for the purpose of provoking breaches of the peace and from continuing to violate the provisions of L.R.A. 14:59, L.R.S. 14:63.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103 L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985 and U.S.C.A. Title 15, Section 1 et seq.

Plaintiffs pray for such further relief as the interest of justice may require.

BY ATTORNEYS,

R. Gordon Kean, Jr., Parish Attorney

John V. Parker, Assistant Parish Attorney

Sargent Pitcher, District Attorney

John F. Ward, Jr., Assistant District Attorney

INFORMATION FOR SERVICE:

SERVE:

Congress of Racial Equality and all representatives, particularly Rev. B. Elton Cox, Patricia Tate, Jerome Smith, Ronnie M. Moore, Weldon J. Rougeau, Thomas Peete and Willie Bradford.

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, who being first duly sworn did depose and say that the matters, facts and things contained in the foregoing complaint are true as therein stated.

S/ Bryan Clemmons

S/ Wingate M. White

S/ John Christian

SWORN TO AND SUBSCRIBED BEFORE ME, This the 15th day of December, 1961.

S/ John V. Parker
NOTARY PUBLIC

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and :
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT, :
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA, :

Plaintiffs, :

VS. :

CONGRESS OF RACIAL EQUALITY, JOHN DOE:
and MARY DOE,
:
Defendants.
:

CIVIL ACTION

FILE NO. ________

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

. . . .

TO: The Congress of Racial Equality, John Doe, and Mary Doe

Please take notice that the undersigned will bring the attached motion for a preliminary injunction on for hearing before the United States District Court (Baton Rouge Division) for the Eastern District of Louisiana, United States Court House, Baton Rouge, Louisiana, at 10:00 o'clock A.M. on the 4th day of ~~December, 1961~~ January, 1962, or as soon thereafter as counsel can be heard.

BY ATTORNEYS:

____
R. Gordon Kean, Jr., Parish Attorney

____
John V. Parker, Asst. Parish Attorney

____
Sargent Pitcher, Jr., District Attorney

____
John F. Ward, Jr., Asst. District Attorney

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, THE LATTER IN HIS OFFICIAL CAPACITY AS MAYOR-PRESIDENT, AND AS SUCH MAYOR OF THE CITY OF BATON ROUGE, LOUISIANA, Plaintiffs,	:	CIVIL ACTION FILE NO. __________ MOTION FOR TEMPORARY RESTRAINING ORDER
VS.	:	
CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE, Defendants.	:	

. . . .

The plaintiffs move this Honorable Court for the issuance of a temporary restraining order without notice, temporarily restraining the defendants, their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them, who receive actual notice of order by personal service or otherwise, from continuing to sponsor, finance or encourage unlawful picketing in the City of Baton Rouge, from engaging or participating in any unlawful congregating or marching in the streets and other public ways of the City of Baton Rouge, Louisiana, from conspiring, encouraging or participating in any boycott in restraint of trade, or from doing any other act designed to provoke breaches of the peace or from doing any act in violation of the provisions of L.R.S. 14:59, L.R.S. 14:16.4, L.R.S. 14:92, L.R.S. 14:100.1, L.R.S. 14:103, L.R.S. 14:103.1, as well as U.S.C.A. Title 42, Section 1985, and U.S.C.A. Title 15, Section 1, et seq.

As appears from the verified complaint, defendants will, unless restrained by order of this Court, cause immediate and irreparable injury, loss and damage to the plaintiffs, for which plaintiffs have no adequate remedy at law, before notice can be served and a hearing had thereon.

BY ATTORNEYS:

R. Gordon Kean, Jr., Parish Attorney

John V. Parker, Asst. Parish Attorney

Sargent Pitcher, Jr., District Attorney

John F. Ward, Jr., Asst. District Attorney

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SOUTHWORTH CO.
100% COTTON FIBER
U.S.A.

DIVISION " "

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

CITY OF BATON ROUGE, EX REL.
JOHN CHRISTIAN, MAYOR-
PRESIDENT, CITY OF BATON ROUGE

VS. NUMBER 85,578

CONGRESS OF RACIAL EQUALITY AND
ALL REPRESENTATIVES, PARTICULARLY
REV. B. ELTON COX, PATRICIA TATE,
JEROME SMITH, RONNIE M. MOORE,
WELDON J. ROUGEAU, JULIA AARON,
DORIS CASTLE, DAVID DENNIS, THOMAS
PEETE AND ACIE BELTON

COPY

ANSWER AND RECONVENTIONAL DEMAND

TO THE HONORABLE, THE JUDGES OF THE NINETEENTH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA:

NOW into Court through undersigned counsels, come and appear CONGRESS OF RACIAL EQUALITY, REV. B. ELTON COX, PATRICIA TATE, JEROME SMITH, RONNIE M. MOORE, WELDON J. ROUGEAU, JULIA AARON, DORIS CASTLE, DAVID DENNIS, THOMAS PEETE and ACIE BELTON, made defendants in the cause hereof, and for answer to plaintiff's petition each denies all and singular the allegations thereof, except such as may be hereinafter expressly admitted.

FURTHER answering plaintiff's petition, defendants plead as follows, to-wit:

-1-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 1 of plaintiff's petition.

-2-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 2 of plaintiff's petition.

-3-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 3 of plaintiff's petition.

-4-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 4 of plaintiff's petition.

FURTHER answering Article 4 of plaintiff's petition, defendants allege and aver that on Friday, the 15th day of December, 1961, defendants did peaceably assemble in down-town Baton Rouge and in front of the Parish Court House Building in protest of the segregation laws, customs, usages and practices of the State of Louisiana, Parish of East Baton Rouge, City of Baton Rouge, Louisiana, all in keeping with their rights as citizens of the United States of America accorded them by the First Amendment to the Constitution of the United States of America.

COPY

-5-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 5 of plaintiff's petition, defendants allege and aver, that the activities they allegedly engaged were in protest of the segregation laws, customs, usages and practices of the State of Louisiana, Parish of East Baton Rouge, City of Baton Rouge, and that, the use of the criminal processes in such a situation denies and deprives the defendants of their privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America; that the use and application of the criminal processes in such a situation run a foul of, offensive to, and breach the "freedom of speech and assemble" clauses of the First Amendment to the Constitution of the United States of America.

-6-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 6 of plaintiff's petition.

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-7-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 7 of plaintiff's petition.

-8-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 8 of plaintiff's petition.

-9-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 9 of plaintiff's petition.

-10-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 10 of plaintiff's petition.

-11-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 11 of plaintiff's petition.

-12-

For lack of sufficient information upon which to base a belief, defendants deny each and every allegation of fact contained in Article 12 of plaintiff's petition.

-13-

That the petition set forth a conclusion of law to which no answer is required. However, if an answer is required, defendants deny each and every allegation of fact therein contained.

** ***********

AND NOW, assuming the position of plaintiff in RECONVENTION, defendants aver:

-14-

That your defendants, each of them, allege and aver, that if the statutory provisions, LSA-R.S. 14:26, LSA-R.S. 14:59, Paragraph 6, LSA-R.S. 14:100.1 and LSA-R.S. 14:103.1, as amended, pleaded by petitioner, CITY OF BATON ROUGE, embrace within their respective terms and meanings the activities in which the defendants allegedly engaged as being criminal in nature and contemplation, then, and in that event (as same relates, singularly or collectively, to said Statutes) said Statutes, LSA-R.S. 14:26, LSA-R.S. 14:59, Paragraph 6, LSA-R.S. 14:100.1, and LSA-R.S. 14:103.1, as amended, are unconstitutional, in that, they (singularly or collectively) deprive your defendants of their privileges, immunities and/or liberties without due process of law and deny them equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

-15-

That your defendants, each of them, allege and aver that on and before Friday, December 15, 1961, defendants did advocate and publicize their intention to peaceably picket and assemble in down-town Baton Rouge, Louisiana, in protest of the segregation laws, customs, usages and practices of the State of Louisiana, and that, the use and/or application of the criminal processes against the defendants, in such instances, by the officials and agencies of the said State, Parish and City is an abuse of authority, repugnant to the rights accorded the defendants, citizens of the United States, under the First Amendment to the Constitution of the United States of America.

-16-

That defendants allege and aver that the use and/or application of the criminal processes, LSA-R.S. 14:26, LSA-R.S. 14:59, Paragraph 6, LSA-R.S. 14:100.1 and LSA-R.S. 14:103.1, as amended, in the cause hereof is unconstitutional, violating the rights, privileges, immunities and liberties accorded defendants, citizens of the United States, under and by the First and Fourteenth Amendments to the Constitution of the United States of America; that such action taken by the State of Louisiana, Parish of East Baton Rouge, City of Baton Rouge, Louisiana, against your defendants offends the "due process" and "equal protection of the laws" clauses of the Fourteenth Amendment to the Constitution of the United States of America.

-17-

That defendants are entitled to, and so desire, that the plaintiff, CITY OF BATON ROUGE, its agents, servants, and/or employees, be enjoined from further interfering with, arresting and prosecuting the defendants under and by the criminal processes while they, the defendants, are in the peaceable exercise of their rights, privileges, immunities and liberties accorded defendants, citizens of the United States, under and by the First and Fourteenth Amendments to the Constitution of the United States of America, race, color or creed notwithstanding.

WHEREFORE, defendants, CONGRESS OF RACIAL EQUALITY, REV. B. ELTON COX, PATRICIA TATE, JEROME SMITH, RONNIE M. MOORE, WELDON J. ROUGEAU, JULIA AARON, DORIS CASTLE, DAVID DENNIS, THOMAS PEETE and ACIE BELTON, pray that the demands of the plaintiff, CITY OF BATON ROUGE, be rejected at its cost, and that there be judgment herein, IN RECONVENTION, in favor of said defendants, decreeing that the use and/or application of the criminal processes, particularly the use and/or application of LSA-R.S. 14:26, LSA-R.S. 14:59, Paragraph 6, LSA-R.S. 14:100.1 and LSA-R.S. 14:103.1, as amended, by the plaintiff, its agents, servants and/or employees against the defendants in the cause hereof, under the facts and circumstances as herein alleged by the defendants, is a constitutional prohibition, violative of the rights, privileges, immunities and liberties guaranteed and accorded defendants, citizens of the United States, under and by the First and Fourteenth Amendments to the Constitution of the United States of America; that the plaintiff, CITY OF BATON ROUGE, its agents, servants and/or employees, be enjoined from further interfering with, arresting and prosecuting the defendants under and by the criminal processes while they, the defendants, are in the peaceable exercise of their rights, privileges, immunities and liberties accorded defendants, citizens of the United States, under and by the First and Fourteenth Amendments to the Constitution of the United States of America, race, color or creed notwithstanding.

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And for all orders necessary, general and equitable relief in the premises hereof.

Attorneys for Defendants:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

By: Johnnie A. Jones

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STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT

Personally, appeared JOHNNIE A. JONES, who, after being first duly sworn, deposed and said:

That he is one of the Attorneys of Record for the defendants named in the foregoing pleadings; that he prepared and read same; that the allegations of facts therein contained are true and correct to the best of his knowledge, information and belief.

Affiant further declares that a copy of the foregoing pleadings has this day been mailed, postage prepaid, to the opposing attorneys.

Johnnie A. Jones
JOHNNIE A. JONES

SWORN TO and SUBSCRIBED before me this 22nd day of December, 1961.

Douglas W. Bell
NOTARY PUBLIC

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED DEC 28 1961

BRYAN CLEMMONS, WINGATE WHITE and
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT,
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA,

Plaintiffs,

MISCELLANEOUS
~~CIVIL ACTION~~ NO. 624

VS.

CONGRESS OF RACIAL EQUALITY, JOHN
DOE and MARY DOE,

Defendants.

C O P Y

ANSWER AND COUNTERCLAIM

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT, IN AND FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION:

NOW INTO COURT, through undersigned counsels, come and appear CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE, made defendants in the cause hereof, and for answer to plaintiffs' complaint each denies all and singular the allegations thereof, except such as may be hereinafter expressly admitted.

FURTHER answering plaintiffs' complaint, defendants plead as follows, to-wit:

-1-

That the allegations contained in Article 1 of plaintiffs' complaint are admitted.

FURTHER answering Article 1 of plaintiffs' complaint, defendants invoke the jurisdiction of this Court pursuant to Title 28, U.S.C.A., Section 1331, as this action arises under the Constitution and laws of the United States, to-wit: The First and Fourteenth Amendments to the Constitution of the United States of America; that the defendants also invoke the jurisdiction of this Court pursuant to Title 28, U.S.C.A., Section 1983, to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation under color of a state law,

LAW OFFICE OF
JOHNNIE A. JONES
530 SOUTH 13TH STREET
BATON ROUGE 2, LA.

statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States, Section 1, and secured by Title 42, U.S.C.A., Section 1981, providing for the equal rights of citizens and of all persons within the jurisdiction of the United States; that the jurisdiction of this Court is also invoked by the defendants pursuant to Title 28, U.S.C.A., Section 2281, this being an action instituted on behalf of defendants for injunctive relief, enjoining the plaintiffs upon the grounds of unconstitutionality enforcement of the criminal provisions of the State of Louisiana, particularly, LSA-R.S. 14:26, LSA-R.S. 14:59, LSA-R.S. 14:63.4, LSA-R.S. 14:92, LSA-R.S. 14:100.1, LSA-R.S. 14:103 and LSA-R.S. 14:103.1, as amended.

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-2-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 2 of plaintiffs' complaint.

-3-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 3 of plaintiffs' complaint.

-4-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 4 of plaintiffs' complaint.

-5-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 5 of plaintiffs' complaint.

-6-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 6 of plaintiffs' complaint.

-7-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 7 of plaintiffs' complaint.

-8-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 8 of plaintiffs' complaint.

COPY

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 9 of plaintiffs' complaint.

-10-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 10 of plaintiffs' complaint.

-11-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 11 of plaintiffs' complaint.

FURTHER answering Article 11 of plaintiffs' complaint, defendants allege and aver that the defendants did, in protest of the racial segregation laws, customs and usages of the State of Louisiana, Parish of East Baton Rouge, City of Baton Rouge, Louisiana and in protest of the discriminatory practices, based on race, of the several business establishments to which references are made in Article 7 and 8 of plaintiffs' complaints, on Thursday, December 14th, 1961, carried pickets, urging "selective buying", i.e., requesting persons in sympathy with their cause to spend their moneys at stores other than the twelve stores which they had listed as being discriminating against Negroes; that for engaging in said activity and/or conduct, certain of the defendants, "the picketing individuals", were arrested by the parish and city authorities, and are presently subjected to criminal prosecution under the provisions of LSA-R.S. 14:100.1, all in violation of defendants' rights accorded them under and by the "freedom of speech" clause of the First Amendment to the Constitution of the United States of America, and in violation of their rights, privileges, immunities and liberties accorded all citizens of the United States under the "due process and equal protection of the law" clauses of the Fourteenth Amendment to the Federal Constitution.

-12-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 12 of plaintiffs' complaint.

FURTHER answering Article 12 of plaintiffs' complaint, defendants allege and aver that the defendants did, on Friday, December 15, 1961, in exercise of the rights accorded defendants, and all other [illegible] the First Amendment to the Federal Constitution, peaceably assemble in the downtown areas of Baton Rouge, Louisiana, in protest of the racial segregation laws, customs and usages of the City, Parish and State thereof.

-13-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 13 of plaintiffs' complaint.

FURTHER answering Article 13 of plaintiffs' complaint, defendants allege and aver that defendants did publically announce to the newspaper, radio and television press media that they, the defendants, intend to continue, in the same or like manner as by defendants alleged and averred in the next preceding Article hereof, to protest the state and local racial segregation laws, customs and usages of the City of Baton Rouge, Louisiana, in exercise of the rights, privileges, immunities and liberties accorded defendants, citizens of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-14-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 14 of plaintiffs' complaint.

-15-

For lack of sufficient information to base a belief, defendants deny each and every allegation of fact contained in Article 15 of plaintiffs' complaint.

****

AND NOW, assuming the position of plaintiff in the COUNTERCLAIM, defendants allege and aver:

-16-

That your defendants, singularly and collectively, allege and aver, that the application of the criminal processes of the State of Louisiana, Parish of East Baton Rouge and City of Baton Rouge, Louisiana, by the authorities thereof, is an unconstitutional application of same, violative of defendants rights, privileges, immunities and liberties accorded and guaranteed defendants, citizens of the United States, under and by the First and Fourteenth Amendments to the Constitution of the United States of America.

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That your defendants allege and aver that the enforcement, rather the application, of the criminal statutory provisions, LSA-R.S. 14:26, LSA-R.S. 14:59, LSA-R.S. 14:63.4, LSA-R.S. 14:92, LSA-R.S. 14:103.1 and LSA-R.S. 14:103.1, as amended, against the defendants, citizens of the United States, by the City, Parish and State authorities, the plaintiffs herein, for defendants' peaceably picketing and assembling in the downtown areas of the City of Baton Rouge, Louisiana, in protest of the racial segregation laws, customs and usages of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, is a constitutional prohibition, violative of and repugnant to the rights, privileges, immunities and liberties accorded defendants, citizens of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

-18-

That the activities of conduct in which the defendants engaged in downtown Baton Rouge, Louisiana, on the days of 14 and 15, December, 1961, were not, rather are not, criminal in nature or character, nor were they contemplated criminal activities on the part of the defendants; that, therefore, not embraced within the terms and meanings of Louisiana Criminal Statutes, LSA-R.S. 14:26, LSA-R.S. 14:59, LSA-R.S. 14:63-4, LSA-R.S. 14:92, LSA-R.S. 14:100.1, LSA-R.S. 14:103 and/or LSA-R.S. 14:103.1, as amended, except violating the rights, privileges, immunities and liberties guaranteed and accorded defendants, citizens of the United States by the First and Fourteenth Amendments to the Constitution of the United States of America.

-19-

That the defendants allege and aver, that under the criminal provisions, LSA-R.S. 14:26, LSA-R.S. 14:59, LSA-R.S. 14-63.4, LSA-R.S. 14:92, LSA-R.S. 14:100.1, LSA-R.S. 14:103, and/or LSA-R.S. 14:103.1, as amended, certain of the defendants have already been arrested, and incarcerated by State, Parish and City officials; that they face criminal prosecution by the State District Court under the provisions of said Statutes; that bail bond are fixed on each defendant, ranging from $1,500 to $6,000, each; that the arrests, incarcerations and the State arranged and anticipated prosecutions are all unconstitutional, violative of the freedom of speech,

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press and assembly clauses of the First Amendment and of the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States of America, the defendants being citizens of the United States of America.

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WHEREFORE, defendants, CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE, pray:

1) That the demands of the plaintiffs, BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, be rejected at their costs.

2) That citation and service hereof be had on the plaintiffs, BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, in the manner prescribed by law.

3) That notice of the hearing of this matter be served upon the proper State Officers as provided by Title 28, U.S.C.A., Section 2284(2).

4) That the Court convene a THREE-JUDGE COURT as provided by Title 28, U.S.C.A., Section 2284.

5) That the Court advance the complaint on the Docket and order a SPEEDY hearing thereof according to law, and ultimately, there be judgment herein, ON THE COUNTERCLAIM, in favor of the said defendants, decreeing the application and/or the enforcement of Louisiana Criminal Statutes, LSA-R.S. 14:26, LSA-R.S. 14:59, LSA-R.S. 14:63-4, LSA-R. S. 14:92, LSA-R.S. 14:100.1, LSA-R.S. 14:103 and/or LSA-R.S. 14:103.1, as amended, by the plaintiffs, their respective successors, subordinates, agents, servants and/or employees, against the said defendants, their respective successors, subordinates, agents, servants and/or employees, for engaging in their, defendants', alleged activities of conduct in downtown Baton Rouge, Louisiana, is an unconstitutional application and/or enforcement of said statutes, violative of the rights, privileges, immunities and liberties guaranteed and accorded defendants, citizens of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America; that the said plaintiffs, their respective successors, subordinates, agents, servants and/or

employees, or agents aforementioned, be enjoined from further interfering with, arresting, incarcerating and prosecuting defendants, their respective successors, subordinates, agents, servants and/or employees, by the unconstitutional application and/or enforcement of the said State Criminal Statutes against the said defendants for engaging in the activities, as by the defendants alleged, of protesting racial segregation laws, customs, and usages in downtown Baton Rouge, Louisiana.

And for all orders necessary, general and equitable relief in the cause hereof.

Attorneys for Defendants:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

By: Johnnie A. Jones

Of Counsel:

Carl Rachlin
280 Broadway
New York 7, New York

C O P Y

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

AFFIDAVIT

Personally, appeared JOHNNIE A. JONES, who, after being first duly sworn, deposed and said:

That he is one of the Attorneys of Record for the defendants named in the foregoing pleadings; that he prepared and read same; that the allegations of facts therein contained are true and correct to the best of his knowledge, information and belief.

Johnnie A. Jones
JOHNNIE A. JONES

SWORN TO and SUBSCRIBED before me this 28th day of December, 1961.

Dudley E. Bell
NOTARY PUBLIC

CERTIFICATE

I, the undersigned, do hereby certify, that, pursuant to Title 28, U.S.C.A., Section 2284(2), the Honorable Jimmie H. Davis, Governor of the State of Louisiana, and the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana, have this day been duly notified by registered mail, return receipt requested, postage prepaid ; that a copy of the foregoing pleadings has this day been served on each of them.

Baton Rouge, Louisiana, this 28th day of December, 1961.

Attorney for Defendants:

Johnnie A. Jones

C O P Y

SERVE THE PLAINTIFFS:

1. HON. BRYAN CLEMMONS,
   Sheriff of the Parish of
   East Baton Rouge, Louisiana.

2. HON. WINGATE WHITE,
   Chief of the Police Department
   of the City of Baton Rouge, Louisiana.

3. HON. JOHN CHRISTIAN,
   Mayor-President of the
   City of Baton Rouge, Parish of
   East Baton Rouge, Louisiana.

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UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF LOUISIANA

(BATON ROUGE DIVISION)

BRYAN CLEMMONS, WINGATE WHITE and
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT,
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA
Plaintiffs

VS. MISCELLANEOUS NO. 624

CONGRESS OF RACIAL EQUALITY,
JOHN DOE and MARY DOE
Defendants

BRIEF AND MEMORANDUM OF AUTHORITIES ON BEHALF OF DEFENDANTS

MAY IT PLEASE THE COURT:

STATEMENT OF FACTS

The facts of this case may be simply stated, that on the 14th and 15th days of December, 1961, the defendants in the cause hereof did demonstrate, by picketing and assembling in the downtown area of Baton Rouge, Louisiana, in protest of the racial segregation laws, customs and usages of that area.

ISSUE

Whether the activities in which the defendants admittedly engaged were legitimate, which a State, Parish and/or City cannot supress by application of the criminal processes without running a foul on the substantial rights, privileges and immunities guaranteed the defendants, citizens of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.?

ARGUMENT

In support of the issue hereof, the defendants quote from page 17 of the concurring opinion of Mr. Justice Harlan in the recent "sit-in-cases" from Baton Rouge, Louisiana, John Burrell Garner, et al. v. State of Louisiana, Case No. 26, rendered December 11, 1961, in which it was said:

> "Such a demonstration, in the circumstances of these two cases, is as much a part of the "free trade in ideas," Abrams v. United States, 250 U. S. 616, 630 (Holmes, J., dissenting), as is verbal expression, more commonly thought of as "speech." It, like speech, appeals to good sense and to "the power of reason as applied through public discussion," Whitney v. California, 274 U. S. 357, 375 (Brandeis, J., concurring), just as much as, if not more than, a public oration delivered from a soapbox at a street corner. This Court has never limited the right to speak, a protected "liberty" under the Fourteenth Amendment, Gitlow v. New York, 268 U. S. 652, 666, to mere verbal expression. Stromberg v. California, 283 U. S. 359; Thornhill v. Alabama, 310 U. S. 88; West Virginia State Board of Education v. Barnette, 319 U. S. 624, 633-634. See also N. A. A. C. P. v. Alabama, 357 U. S. 449, 460. If the act of displaying a red flag as a symbol of opposition to organized government is a liberty encompassed within free speech as protected by the Fourteenth Amendment, Stromberg v. California, supra, the act of sitting at a privately owned lunch counter with the consent of the owner, as a demonstration of opposition to enforced segregation, is surely within the same range of protections. This is not to say, of course, that the Fourteenth Amendment reaches to demonstrations conducted on private property over the objection of the owner (as in Briscoe), just as it would surely not encompass verbal expression in a private home if the owner has not consented.
>
> No one can deny the interest that a State has in preserving peace and harmony within its borders. Pursuant to this interest, a state legislature may enact a trespass statute, or a disturbance of the peace statute which either lists in detail the acts condemned by legitimate state policy or proscribes breaches of the peace generally, thus relating the offense to the already developed body of common law defining that crime. Or it may, as Louisiana has done, append to a specific enumeration in a breach of the peace statute a "catch-all" clause to provide for unforeseen but obviously disruptive and offensive behavior which cannot be justified, and which is not within the range of constitutional protection.
>
> But when a State seeks to subject to criminal sanctions conduct which, except for a demonstrated paramount state interest, would be within the range of freedom of expression as assured by the Fourteenth Amendment, it cannot do so by means of a general and all-inclusive breach of the peace prohibition. It must bring the activity sought to be proscribed within the ambit of a statute or clause "narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State." Cantwell v. Connecticut, supra at 311; Thornhill v. Alabama, 310 U. S. 88, 105. And of course that interest must be a legitimate one. A State may not "supress free communication of views, religious or other under the guise of conserving desirable conditions." Cantwell, supra, at 308.

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> These limitations exist not because control of such activity is beyond the power of the State, but because sound constitutional principles demand of the state legislature that it focus on the nature of the otherwise "protected" conduct it is prohibiting, and that it then make a legislative judgment as to whether that conduct presents so clear and present a danger to the welfare of the community that it may legitimately be criminally proscribed."

Other authorities supporting the position of the defendants herein are: Cooper v. Aaron, 358 U. S. 1; Buchanan v. Warley, 245 U. S. 60; Sellers v. Johnson, 332 U. S. 851, 163 Fed. (2d) 877; Rockwell v. Morris, 30 U. S. Law Week 3154; DeJonge v. Oregon, 299 U. S. 353; Baldwin v. Morgan, 287 Fed. (2d) 750; Boynton v. Virginia, 364 U. S. 454; Marsh v. Alabama, 326 U. S. 501; Cantwell v. Connecticut, 310 U. S. 296; Martin v. Struthers, 318 U. S. 141; Winters v. New York, 333 U. S. 507; Smith v. California, 361 U. S. 147.

CONCLUSION

It is respectfully submitted that the application of the criminal processes, by the plaintiffs, against the defendants, under the facts and circumstances, are unconstitutional, violative of the rights, privileges, immunities and liberties accorded the defendants, citizens of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America; that the plaintiffs should be enjoined as prayed for by the defendants.

Respectfully submitted
Attorneys for Defendants:

JOHNNIE A. JONES

Robert F. Collins
Nils R. Douglas
Lolis E. Elie
2211 Dryades Street
New Orleans 13, Louisiana

By: Johnnie A. Jones

Of Counsel:
Carl Rachlin
280 Broadway
New York 7, New York

CERTIFICATE

The undersigned hereby certify that a copy hereof has this day been served on the attorneys for plaintiffs.

Baton Rouge, Louisiana, this 4th day of January, 1962.

Johnnie A. Jones

COPY

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, THE LATTER IN HIS OFFICIAL CAPACITY AS MAYOR-PRESIDENT AND AS SUCH MAYOR OF THE CITY OF BATON ROUGE, LOUISIANA,

Plaintiffs,

VS.

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,

Defendants.

MISCELLANEOUS NO. 404

MEMORANDUM OF AUTHORITIES ON MOTION TO DISMISS COUNTERCLAIM

. . . .

MAY IT PLEASE THE COURT:

I.

This is a suit for injunctive relief. For answer, defendants deny the relief sought primarily on the allegations that certain criminal statutes of the State of Louisiana are being "unconstitutionally" enforced as to them, and they, therefore, seek to invoke the convening of a three judge court to hear their complaints.

We would point out initially that the corporate defendant here before this Court is without standing to urge any alleged "unconstitutional" application of the criminal statutes in question, because these statutes have not been invoked as to that defendant. However, assuming the contrary to be so, it is clear that this defendant may not convert these summary proceedings into ordinary process, and it is equally clear that the constitutionality of a statute cannot be considered except in a suit by ordinary process. The nature of the preliminary injunction here sought and the legal prerequisites for its issuance are properly stated in the case of *Railroad*

Yardmasters vs. Pennsylvania Railroad Company, 224 Fed. 2d 226, as follows:

> "We are now reviewing the propriety of the issuance of a preliminary injunction. At this stage, we are concerned only to find out if the Union 'has . . . raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberate investigation.' Hamilton Watch Co. v. Benrus Watch Co., supra, at page 740. Where, as here, the harm to the Railroad from the injunction can be adequately measured in dollars, while the harm to the Union if the injunction is refused is irreparable, the raising of the substantial and serious doubts is at least sufficient to justify the issuance of a temporary injunction. Hamilton Watch Co. v. Benrus Watch Co., supra; Buffington v. Harvey, 1877, 95 U.S. 99, 24 L.Ed. 381; Doeskin Products, Inc. v. United Paper Co., 7 Cir., 1952, 195 F. 2d 356."

To the same effect is Securities and Exchange Comm. vs. Associated Gas & Electric, 24 F. Supp. 899, where the Court held that on a motion for a preliminary injunction, it was "confined to the facts presented in the papers."

In Hamilton Watch Co. vs. Benrus Watch Co., 206 F. 2d 738, the purpose of the preliminary injunction is succinctly stated, thus:

> "It serves as an equitable policing measure to prevent the parties from harming one another during the litigation; to keep the parties, while the suit goes on, as far as possible in the respective positions they occupied when the suit began."

The Louisiana authorities are to the same effect. Thus, in [illegible] vs. Town of Slidell, 111 La. 212, 35 So. 411, the rule is properly stated thus:

> "The object of the rule . . . is to give an opportunity to the defendant to show that an injunction is not allowable on the face of the papers, or in other words, that the facts and allegations contained in the petition are not sufficient to warrant the court in issuing the writ. An examination of the merits on the trial of that rule is premature."

The sole issue, therefore, on the rule for a preliminary injunction here is whether the petition of plaintiffs has "raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair grounds for litigation and thus a more deliberate investigation."

We believe that the petition and the facts to be adduced on the hearing for a preliminary injunction do raise such serious questions as to require the issuance of a preliminary injunction as prayed for.

II.

The counterclaim, as we appreciate it, does not seek to prohibit the enforcement of the various State criminal statutes set forth therein on the grounds that these statutes are unconstitutional. To the contrary, the counterclaim implies the constitutionality of the statutes but contends that the statutes are being "unconstitutionally" applied. Such pleadings are not sufficient to warrant the convening of a three judge court, under the provisions of 28 U.S.C.A. 2281-2284, for these provisions provide in part that no interlocutory or permanent injunction restraining the enforcement of any State statute shall be granted by any District Court "upon the ground of the unconstitutionality of such statute" unless the application therefor is heard by a District Court of three judges. It is thus clear from a reading of the statute that the three judge court provided by 28 U.S.C.A. 2284 is required only where an attack is made on a statute on the ground of the "unconstitutionality" thereof. Such is not the case here and, therefore, without more, the prayer for the convening of a three judge court must be denied.

III.

But even if it were not so, this Court is not required to convene a three judge court except in those instances where it is convinced that a substantial question of constitutionality is presented. In this case, defendants do not raise any substantial question of constitutionality, nor allege any facts on which this Court could now be convinced that such an issue was to be presented. Accordingly, it is within the discretion of the District Judge to convene or not to convene a three judge court. See [illegible], 143 F. Supp. 477, holding as follows:

> ". . .District Court of three judges is not required to be convene to hear the matter, notwithstanding the allegations, unless a substantial issue of unconstitutionality is presented by such allegations. California Water Service Co. v. City of Redding, 304 U.S. 252, 58 S.Ct. 865, 82 L.Ed. 1323, Wicks v. Southern Pac. Co., 9 Cir., 231 F. 2d 130."

To the same effect is [illegible] vs. Long, [illegible] F. Supp. [illegible], holding thus:

> "But the Court is admonished by the authorities that before taking steps to convene a three judge court it must be satisfied that a substantial question of constitutionality is presented."

IV.

Although defendants have sought to invoke the jurisdiction of the Federal Court in these proceedings by way of their counterclaim, and have thus conceded the jurisdiction of the Court for the purpose of the motion for a preliminary injunction, we doubt that jurisdiction can be conferred by consent. The plaintiffs instituted their suit primarily under the provisions of 42 U.S.C.A. Section 1985(3), under which injunctive relief as prayed for may be granted. Thus, in the case of Brewer vs. Hoxie School District No. 46, 238 F. 2d 91, the District sought injunctive relief against certain persons alleged to be in conspiracy to prevent the members of the District Board from carrying out their legal responsibility. It was urged in part that the provisions of 42 U.S.C.A. 1985(3) did not authorize the issuance of an injunction because the specific grant contained in that statute was "a right of action for recovery of damages occasioned by acts done in furtherance" of the alleged conspiracy. The Eighth Circuit Court of Appeals expressly held that the District Judge "was not in error in recognizing the quoted section as affording additional support to the Federal jurisdiction and the issuance of the injunction."

Under these circumstances, if these plaintiffs can show that the defendants, and others conspiring with them, prevent the lawfully constituted authorities from affording all persons, whether white or colored, equal protection of the law, then they are entitled to the relief sought under the provisions of 28 U.S.C.A. 1985(3) and the above cited case.

For these reasons it is respectfully submitted that the motion to dismiss the counterclaim should be granted, and this matter now heard and decided by this Court on the petition of plaintiffs and the proof to be offered pursuant thereto.

Respectfully submitted,

BY ATTORNEY:

E. Gordon Kean, Jr., Parish Attorney

CERTIFICATE

I, of counsel for plaintiffs, do hereby certify that a copy of the above and foregoing memorandum of authorities on motion to dismiss counterclaim has this day been handed to Johnnie A. Jones, Attorney of record for the defendants.

Baton Rouge, Louisiana, this 4th day of January, 1962.

E. Gordon Kean, Jr.

MINUTE ENTRY
JANUARY 4, 1962
WEST, J:

BRYAN CLEMMONS, ET AL

VERSUS

MISCELLANEOUS 624

CONGRESS OF RACIAL EQUALITY, ET AL

* * * * * * * * * * * * * *

This matter came on for hearing on motion of plaintiff for the issuance of a preliminary injunction. After hearing argument of counsel, a preliminary injunction was granted; the Court ordered all proceedings pertaining to this matter pending in the State Court for the State of Louisiana stayed pending the completion of the trial on the merits of this matter for a permanent injunction and pending the completion of any appeals that might be taken by either party hereto from the decision of this Court with regard to the issuance of a permanent injunction; that this matter is set for hearing on the merits in connection with application of plaintiffs for the issuance of a permanent injunction at 10:00 A. M. on January 11, 1962, in this Court at Baton Rouge, Louisiana. Counsel were ordered by the Court to present an order for signature in accordance herewith.

After hearing on the application of respondents for the convening of a three-judge court, the Court denied said application for a three-judge court on the grounds that the cross-claim filed by respondents did not, on its face, raise a serious question concerning the constitutionality of the State Statutes therein referred to.

PRESENT:

R. Gordon Kean, Jr., Esq.
John V. Parker, Esq.
John F. Ward, Esq.
Sargent Pitcher, Esq.
Scallan E. Walsh, Esq. - Attorneys for Petitioners

Johnnie A. Jones, Esq.
Robert F. Collins, Esq.
Carl Rachlin, Esq. - Attorneys for Respondents

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, THE LATTER IN HIS OFFICIAL CAPACITY AS MAYOR-PRESIDENT AND AS SUCH MAYOR OF THE CITY OF BATON ROUGE, LOUISIANA,

Plaintiffs,

VS.

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,

Defendants.

MISCELLANEOUS NO. 624

MOTION TO DISMISS COUNTERCLAIM

. . . .

Plaintiffs, Bryan Clemmons, Wingate White and John Christian, together with Jack P. F. Gremillion, Attorney General of the State of Louisiana, and Jimmie H. Davis, Governor of the State of Louisiana, move the Court to dismiss the counterclaim filed in these proceedings on the rule to show cause why a preliminary injunction should not issue as prayed for, on the grounds and for the following reasons:

1.

Because the counterclaim fails to state a claim on which relief can be granted at a hearing on a rule for a preliminary injunction. By way of specification, but without limiting the generality of the foregoing, this matter is set for hearing on a motion by the original plaintiffs herein for a preliminary injunction and defendants may not convert the rule to show cause into a trial on the merits by way of counterclaim, nor may the constitutionality of a statute be considered by way of summary process. A preliminary injunction is merely an interlocutory judgment designed to preserve the existing status pending the trial of the issues on the merits of the case, and the sole issue is whether or not, on the face of the complaint and the evidence offered pursuant thereto, plaintiffs have shown reasonable grounds upon which relief may be granted as prayed for.

Further, petitioners show that under the counterclaim and its accompanying prayer for relief, defendants seek the convening of a three Judge Court, as provided by Title 28 U.S.C.A. Section 2284, which statutory provisions provide for the convening of such a court under certain circumstances where the constitutionality of a State statute is at issue. Petitioners show that the counterclaim filed in these proceedings does not assert the unconstitutionality of certain criminal statutory provisions of the State of Louisiana therein specifically mentioned, but to the contrary contend that the said criminal statutes of the State of Louisiana are being unconstitutionally applied contrary to the alleged rights, privileges, liberties and immunities accorded the defendants by the Constitution of the United States. Therefore, defendnats, through their counterclaim, have not asserted any valid basis for the convening of a three Judge Court, pursuant to the provisions of 28 U.S.C.A. 2284.

Further, the convening of a three Judge Court is within the discretion of the District Judge and such a court is not to be convened unless a substantial issue of unconstitutionality is presented. Petitioners show, as heretofore asserted, that no issue of unconstitutionality is raised by the counterclaim; but assuming that such an issue is sought to be asserted (which is denied), the allegations of the petition do not make out any substantial question of constitutionality and, therefore, the District Judge is authorized to deny the motion for the convening of a three Judge Court.

Further, in support of the alleged unconstitutional enforcement of the various criminal statutory provisions set forth in the counterclaim (which is denied), it is alleged that "certain of the defendants have already been arrested * * *"; petitioners show that the principal defendant in these proceedings is the Congress of Racial Equality, a New York corporation, and that there are no individual defendants here before the Court which have been arrested, as alleged in the counterclaim.

Plaintiffs attach a memorandum of authorities in support of the various issues herein raised.

BY ATTORNEYS,

E. Gordon Kean, Jr., Parish Attorney

John V. Parker, Assistant Parish Attorney

Sargent Pitcher, District Attorney

John F. Ward, Jr., Assistant District Attorney

Jack P. F. Gremillion, Attorney General

Scallan E. Walsh, Assistant Attorney General

CERTIFICATE

I, of counsel for plaintiffs, do hereby certify that a copy of the above and foregoing motion to dismiss has this day been handed to Johnnie A. Jones, Attorney of record for the defendants.

Baton Rouge, Louisiana, this 4th day of January, 1962.

E. Gordon Kean, Jr.

11

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UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA, : MISCELLANEOUS

Plaintiffs, :

VS. : FILE NO. 624

CONGRESS OF RACIAL EQUALITY,
JOHN DOE AND MARY DOE,

Defendants. :

* *

JUDGMENT

The above entitled and numbered cause coming on to be heard on the 11th day of January, 1962, and all parties thereto having appeared by counsel, and the Court having heard the pleadings, the evidence, and arguments of counsel, and upon due consideration thereof, and for the written reasons this day assigned, it appearing to the Court that the plaintiffs should be granted substantially the relief prayed for in their complaint, it is therefore on this the 2nd day of February, 1962.

ORDERED, ADJUDGED AND DECREED that the preliminary injunction heretofore granted and issued by this Court herein on the 4th day of January, 1962, and entered in the office of the Clerk of this Court on the 4th day of January, 1962, be and the same hereby is made perpetual and permanent to the extent set forth below, and that the defendant corporation, Congress of Racial Equality and John Doe and Mary Doe and each of them and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, be permanently and perpetually enjoined and

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restrained from financing, sponsoring, encouraging, or engaging in meetings or any other activities whereby violations of existing State or Federal laws are suggested, advocated, or encouraged; from financing, sponsoring, encouraging, or engaging in meetings whereby the public ways, streets, sidewalks, or highways, of the City of Baton Rouge, or the Parish of East Baton Rouge, are blocked, or the unimpaired use thereof denied to other traffic; from financing, sponsoring, encouraging, or engaging in meetings or any other activities wherein or whereby disobedience to the lawful orders of properly constituted law enforcing agencies and their personnel is advocated, suggested or encouraged; from financing, sponsoring, encouraging, or engaging in meetings or any other activities designed or held for the purpose of impeding or obstructing the administration of justice or the orderly functions of government; and from financing, sponsoring, or encouraging, or engaging in any activities designed to, or which do, impede, hinder, or obstruct officers of the law, or officials of the Parish of East Baton Rouge, or the City of Baton Rouge, from performing and discharging the duties of their respective offices.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the demands for injunctive relief contained in the defendants' counterclaim are denied.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the defendant corporation, Congress of Racial Equality, pay the costs of these proceedings to be taxed by the Clerk of this Court, and that execution issue for the same.

Baton Rouge, Louisiana, February 2, 1962.

(SIGNED) E. GORDON WEST

E. Gordon West
United States District Judge

Clerk's Office
A TRUE COPY
Feb. 8, 1962
F. M. Woody
Deputy Clerk, United States
District Court
Eastern District of Louisiana
Baton Rouge, La.

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UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(BATON ROUGE DIVISION)

BRYAN CLEMMONS, WINGATE WHITE,
AND JOHN CHRISTIAN, THE LATTER IN
HIS OFFICIAL CAPACITY AS MAYOR-
PRESIDENT, AND AS SUCH MAYOR OF
THE CITY OF BATON ROUGE, LOUISIANA,

MISCELLANEOUS

Plaintiffs

VERSUS

FILE NO. 624

CONGRESS OF RACIAL EQUALITY,
JOHN DOE, AND MARY DOE,

Defendants.

ORDER

THIS CAUSE coming on to be heard upon the petition of CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE, the defendants in the cause hereof, to "Abate the Action and Dismiss" the Complaint of the plaintiffs, BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN (the latter in his official capacity as Mayor-President, and as such Mayor of the City of Baton Rouge, Louisiana), at plaintiffs' costs, and the Court having read the said petition and being fully advised in the premises, and due and proper notices having been served upon all opposing attorneys of record:

I. IT IS THEREFORE ORDERED, ADJUDGED and DECREED that leave be, and said defendants are hereby permitted to file "instanter" their petition to Abate and Dismiss the Complaint and Cause of said plaintiffs at plaintiffs' costs.

II. IT IS FURTHER ORDERED, ADJUDGED and DECREED that the relief sought and prayed for in the instant petition and by the defendants in the cause hereof is hereby denied.

Baton Rouge, Louisiana, this 6 day of February, 1962.

(Signed) E. Gordon West
E. GORDON WEST
United States District Judge

LAW OFFICE OF
JOHNNIE A. JONES
530 SOUTH 13TH STREET
BATON ROUGE 2, LA.

RECEIVED
APR 20 1962
VLADECK & ELIAS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

MINUTE ENTRY:
APRIL 9, 1962
WEST, J.

BRYAN CLEMMONS, WINGATE WHITE,
AND JOHN CHRISTIAN, THE LATTER IN
HIS OFFICIAL CAPACITY AS MAYOR-
PRESIDENT, AND AS SUCH MAYOR OF
THE CITY OF BATON ROUGE, LOUISIANA

MISCELLANEOUS

VERSUS

FILE NO. 624

CONGRESS OF RACIAL EQUALITY,
JOHN DOE, AND MARY DOE

- - - - - - - - - - -

Considering the motion filed by counsel for defendants-appellants in the above matter:

IT IS ORDERED that the return date herein be and the same is hereby extended for an additional period of Fifty (50) days from April 8, 1962.

(SIGNED) E. GORDON WEST

E. Gordon West
United States District Judge

1

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and *
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT *
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA, * MISCELLANEOUS NO. 624

Plaintiffs, *

VS.

CONGRESS OF RACIAL EQUALITY, JOHN DOE
and MARY DOE, *

Defendants. *

* *

MOTION TO PERMIT EXHIBITS TO GO TO APPELLATE COURT IN ORIGINAL FORM.

NOW comes the CONGRESS OF RACIAL EQUALITY, defendant-appellant, through undersigned counsel, and moves the Court for an order authorizing the filing in the United States Court of Appeals for the Fifth Circuit, to which Mover has taken an appeal in this cause, in their original form, any Exhibits which cannot be transcribed or copied into the record.

Signed____________________________

Attorney for____________________

ORDER

The foregoing Motion being considered, IT IS ORDERED that the Congress of Racial Equality, defendant-appellant be and it is hereby permitted to file in the Fifth Circuit, in their original form, any Exhibits which cannot be transcribed or copied into the record.

This the_____day of___________, 1962.

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

____
Judge, United States District Court
Eastern District of Louisiana
Baton Rouge Division.

CERTIFICATE

I, of counsel for defendants-appellants do hereby certify that a copy of the above and foregoing MOTION TO PERMIT EXHIBITS TO GO TO APPELLATE COURT IN ORIGINAL FORM has this day been mailed to R. Gordon Kean, Jr., Attorney of record for the Plaintiffs, by placing same in the United States mail, postage prepaid, addressed to his office, 202 Municipal Building, Baton Rouge, Louisiana.

New Orleans, Louisiana, this 10th day of May, 1962.

ROBERT F. COLLINS

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1963

No.

BRYAN CLEMMONS, WINGATE WHITE

and JOHN CHRISTIAN,

The Latter in His Official Capacity as Mayor-President of the City of Baton Rouge, Louisiana,

PETITIONERS,

VERSUS

CONGRESS OF RACIAL EQUALITY,

JOHN DOE and MARY DOE,

RESPONDENTS.

On Petition For Writ Of Certiorari To The

United States Court of Appeals

For The Fifth Circuit

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

In this case* the Court is being called upon to render an academic dissertation, for no resolution of the questions presented for review could alter the result reached in the Court of Appeals.

In directing dissolution of the injunction and dismissal of the complaint, the Court of Appeals made it abundantly explicit that its action was predicated upon three separate grounds:

> ". . . (1) the plaintiffs have failed to state or to show that the defendants conspired *purposefully* to deprive others of equal protection of the laws, as required by Section 1985(3); (2) there is no federal right in the city officials, individually or on behalf of the Baton Rouge citizenry, to be protected in the performance of their municipal duties, as 28 U.S.C.A. § 1331 requires of an action arising under the Constitution and laws of the United States; and (3) there is no state action here such as is necessary to support a suit invoking the Fourteenth Amendment and statutes enacted to enforce that amendment." (Italics supplied by the Court of Appeals.) (Petition, page 38.)

The questions presented by the petition relate solely to what the Court of Appeals termed the "third fatal weakness in the plaintiffs' case"--the issue of "state action." No questions with respect to the first and second fatal weaknesses are presented for review. Thus, the petition does not urge that the Court of Appeals was in error in holding that the only conspiracies proscribed

* This case is closely related to Moore v Louisiana in which a petition for certiorari has been filed in this Court, and Cox v Louisiana, on Appeal to this Court from the Supreme Court of Louisiana.

by Section 1985(3) are those having as their purpose depriving persons of Fourteenth Amendment rights. Nor do petitioners now ~~urge~~ claim that such a purpose can be imputed to a demonstration, having as its object the securing of equal protection of the laws for all, ~~if~~ simply because the demonstration results in temporarily blocking traffic or reducing police protection in other parts of the city. Such a contention, the Court of Appeals aptly and acutely commented, "has the earmarks of a bad pun." ~~No contention is made~~ This Court has not been asked to reverse with respect to the issue of "purpose" nor with respect to the issue of the federal interest in avoiding traffic interruptions and diminished police protection, although each of these is sufficient, by itself, to sustain the result below.

While not claiming that the Court of Appeals was without power to decide, on its own motion, whether there was a valid federal claim underlying the federal injunction, the petition seems to contend that there was something improper in the Court's having done so. Faced with the question of whether it should uphold an injunction imposing prior restraints upon the exercise of Constitutional rights to freedom of speech and assembly, it was patently not erroneous for the Court of Appeals to conclude:

> "In the circumstances, a proper regard for the federal system requires that the Court scrutinize closely the question of jurisdiction and whether on the merits the case is indeed one arising under the Constitution and laws of the United States." (*Id.* at 24.)

It was clearly correct for the Court of Appeals to direct that the injunction be dissolved and the complaint dismissed. The questions presented for review would not alter this disposition. The petition, accordingly, should be denied.

Respectfully submitted,

COPY

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

RECEIVED
DEC 27 19
VLADECK & ELIAS

December 26, 1963

John V. Parker, Esquire
Assistant Parish Attorney
East Baton Rouge Parish
Baton Rouge, Louisiana

RE: BRYAN CLEMMONS, ET AL. v. CONGRESS OF
RACIAL EQUALITY, ET AL.
No. 648, October Term, 1963

Dear Mr. Parker:

The request contained in your letter of December 23rd for an extension of time to file a response to the petition for certiorari in the above-entitled case has been granted and the time extended to and including January 8, 1964.

Very truly yours,

JOHN F. DAVIS, Clerk

By

E. P. Cullinan
Chief Deputy

EPC:rlf
AIR MAIL

cc: Carl Rachlin, Esquire
280 Broadway
New York 7, New York

Carr Clinton

February 17, 1964

Martin Southern, Esq.
Southern & Southern, Esqs.
Rooms 201-3 Realty Bldg.
Knoxville 2, Tennessee

Dear Martin:

Enclosed please find;

A - A copy of brief in Clinton v. Carr, which you wish to serve upon Mr. Allan Elliott.

B - Copy of letter to the Honorable Carl W. Reuss, Clerk, U. S. Court of Appeals. This brief, in my view, is as good a statement as can be made at this time on the remand issue. This is why I have great doubts about an amicus brief since it may in some way compromise the issue and we will not have the control over that brief as we do over any work we do ourselves.

This procedure last week was tried in the Third Circuit without success but for a reason which is not applicable to your case. The Third Circuit took the position in substance that the State Courts of Pennsylvania were perfectly capable of giving a fair trial on a civil rights issue, which I assume most people would agree to. This is, of course, different from the Tennessee Court and the arbitrary manner in which the Tennessee Court handled the case.

In addition, the issue in your case is a very clear civil rights issue, that is, free speech, etc., whereas it was a criminal proceeding that was involved in the Pennsylvania courts and no real reason could be set forth as to why the Pennsylvania court could not handle the case in a fair and judicious manner. You will recall, that one of the bases for removal is that the defendant cannot receive a fair trial in the State Tribunal so that I would not concern myself overly much with the Pennsylvania result.

In view of the fact that the House of Representatives has now passed the civil rights legislation and Article 9 of the House legislation particularly, provides for the appeal of a remand to the State Court, we ought not to be in a hurry to argue the motion to dismiss since should the legislation be passed in its present form as regards to Article 9, as seems highly likely, we do not have to worry about our

Martin Southern, Esq. February 17, 1964

procedural right since it will be a matter of current statute and not interpretation of old laws.

With kindest regards,

Sincerely,

CARL RACHLIN

CR/hm
Encls.

February 17, 1964

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Bob, Nils & Lolis:

I don't know whether you received a copy of the within order dismissing the suit in Clemmons v. Core. In case you have not, I enclose a photo copy.

Please note that the other side has to pay all costs of the suit and appeal. Can you tell us how much is involved in the costs?

It was good seeing you this week-end. The party was absolutely wonderful Saturday night.

Sincerely,

CR/hm
Encl.

CARL RACHLIN

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTENBERRY, THE LATTER IN HIS OFFICIAL CAPACITY AS MAYOR-PRESIDENT AND AS SUCH MAYOR OF THE CITY OF BATON ROUGE, LOUISIANA,

Plaintiffs,

VS.

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,

Defendants.

MISCELLANEOUS NO. 404

ORIGINAL MEMORANDUM ON BEHALF OF PLAINTIFFS ON THE APPLICATION FOR A PERMANENT INJUNCTION

. . . .

MAY IT PLEASE THE COURT:

This is a suit in which the Mayor-President, individually and in his capacity as the chief administrative officer of the City of Baton Rouge and the Parish of East Baton Rouge, together with the Sheriff in his capacity as the chief law enforcement officer for the Parish of East Baton Rouge, and the Chief of Police, in his capacity as the chief law enforcement officer of the City of Baton Rouge, seek to permanently enjoin a New York corporation known as the Congress of Racial Equality, and others acting in concert with it, from performing and carrying out certain unlawful acts on the grounds that if these defendants persist in their unlawful activities they will cause the plaintiffs, both individually and in their official capacity, as well as the public generally, irreparable damage through resulting disturbances of the peace and ultimate violence and bloodshed. Since the Court only recently heard the testimony in these proceedings, and is, therefore, familiar with all of the acts and circumstances which preceded the filing of this suit, we shall not dwell in detail on that testimony.

It suffices to point out that the activities complained of actually had their beginning approximately one week prior to December 15, 1961; they commenced with a "school" or "training meeting" at which officers and representatives of the defendant organization gave scheduled instructions in the law violations which were to follow. Pursuant to these instructions, members of the defendant organization and others acting in concert with them commenced the picketing of certain downtown stores, and further carried out "sit-in" demonstrations at lunch counters operated by several of these stores. Although each of these instances constituted a violation of the statutes of the State of Louisiana, the police authorities did not then make any arrests, but requested that the individuals participating in these demonstrations discontinue them. This was done without undue publicity and without any unusual disturbance of downtown shopping activity. It was not until those participating in the picketing and the "sit-in" demonstrations had been specifically warned that repeated occurrences of these law violations would result in arrest, that any of the demonstrators were, in fact, arrested.

As pointed out by the law enforcement officials who testified in these proceedings, those participating in the picketing and "sit-in" demonstrations were limited in number and were, therefore, handled without any additional burden to the Police Department. However, once the arrests were made, the Congress of Racial Equality seized upon them as an opportunity for a mass "protest" demonstration. As it turned out, this mass "protest" demonstration was of such a magnitude that it ultimately got out of control, both of those who planned it and the police authorities, with the result that for a short time on December 15, 1961, the downtown area of Baton Rouge was threatened with riot, violence and bloodshed at the most, and complete disruption of organized public and private activity at the very least.

From the very moment the demonstrations were in process of being organized by the defendants on the morning of December 15, 1961, until they were terminated later that same day, it was apparent that the demonstrators were determined to take over the public streets and sidewalks and to do so despite any instructions to the contrary on the part of the police authorities. In fact, Captain Henderson of the Sheriff's Department, who was dispatched to the Scotlandville area, and who was present at the commencement of the demonstrations, testified that his pleas to not obstruct the highway were ignored by the demonstrators and that the demonstrators moved out of the highway only on the command of a Reverend Cox, identified as a field representative of the defendant organization and as the leader of the demonstrations in question.

Although the police authorities were uninformed as to the purpose of the demonstrations until shortly before the demonstrators massed in front of the Parish Court House, it was apparent that the demonstration was, in fact, a "march" on the Court House for the purpose of protesting the arrest of 23 persons who had been arrested several days previously for picketing in violation of Louisiana law. In the process of this "march" on the Court House, the demonstrators obstructed the highways, they completely blocked streets and sidewalks in the downtown area, and once they were in front of the Court House, they made it impossible for persons to have free access to their homes and offices; their massed presence further required the complete rerouting of traffic, both vehicular and pedestrian, and even after being dispersed by tear gas, these two thousand demonstrators roamed at will up and down the sidewalks of Third Street in such a manner as to completely disrupt the normal activity of that shopping area, and seriously threaten the public peace and order throughout the community. Finally, after carrying out their "protest", and despite the understanding given the police authorities by Reverend Cox previously, they refused to disperse on orders to do so, with the result that a situation was created which required prompt and effective police action in order to avoid what all of the witnesses testified was, in their opinion, imminent violence and bloodshed.

Despite the fact that Title 11, Section 210, of the Baton Rouge City Code, provides that no "procession or parade * * * shall occupy, march, or proceed along any street except in accordance with a permit issued by the Chief of Police and such other regulations as are set forth herein which may apply," no permit was secured, and, in fact, no representative of the defendant organization even sought such a permit for either the movement of the demonstrators from Scotlandville to downtown Baton Rouge or the mass demonstration which took place in downtown Baton Rouge. As a matter of fact, no member of the defendant organization ever contacted any of the police authorities to advise them of the defendants' plans and it was not until some several thousand persons, either belonging to the defendant organization or participating with it in its planned demonstration, were actually in the downtown area that the police authorities were informed as to the purpose and direction of this mass meeting. In the process of carrying out their planned "protest", these demonstrators not only denied other persons their equal rights under the law, and their right to equal protection of the law, but they also actively and affirmatively interfered with and hindered the duly constituted authorities of the State of Louisiana in their efforts to provide to all persons equal protection of the law, guaranteed to them by the State and Federal Constitutions. The excuse given by counsel for the defendants for this unlawful and unconscionable activity was that these demonstrators had a "right" to free speech and assembly, the exercise of which could not be denied them, except under circumstances where the demonstrators were being actually exhorted to violence or had perpetrated violence.

The purpose of an act, no matter how laudable, is no excuse for a violation of the law. Further, as we shall hereafter demonstrate, the jurisprudence is clearly to the effect that "the authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties, but rather as one of the means of safeguarding the good order upon which they ultimately depend." For this reason, as so eloquently stated by the United States Supreme Court in the case of Cox vs. State of New Hampshire, 312 U.S. 569, 85 L.Ed. 1049, 61 S.Ct. 762, 133 A.L.R. 1396:

> "The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways is in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinion." (Underlining ours)

I.

JURISDICTION OF THE COURT

Plaintiffs invoke the jurisdiction of this Court under Title 28, U.S.C.A, Sections 1332 and 1343, the former providing that the District Courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000.00, and is between citizens of different states; and the latter vesting similar original jurisdiction in any action "to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

There is obvious diversity of citizenship. The plaintiffs are residents of the State of Louisiana and the defendant is an admitted New York corporation. For the purpose of attempting to control the demonstration of December 15, 1961, both the Chief of Police and the Sheriff had to call a major portion of their off duty personnel back to duty, all at additional cost to the taxpayers of this City and Parish; if the demonstrations had persisted, as the defendants were determined that they do, in the absence of judicial restraint, the cost of policing their unlawful activities would have greatly exceeded $10,000.00.

In addition, it has been held that the federal courts have jurisdiction of and the right to grant injunctive relief in those civil actions involving violations of 42 U.S.C.A. Section 1985(3). Thus, in the case of Brewer vs. Hoxie School District No. 46, 238 F.2d 91, the precise issue was before the Court, the appellants contending that injunctive relief could not be granted under this particular federal statute because the specific grant contained in that statute "is of a right of action for recovery of damages occasioned by acts done in furtherance of such conspiracy".

The United States Court of Appeals, Eighth Circuit, in a carefully considered opinion, held that the trial judge "was not in error in recognizing the quoted section as affording additional support to the federal jurisdiction and the issuance of the injunction" against the defendants. The Court cited multiple cases "in support of the conclusion that the statute affords a standard to federal equity courts in respect to such conduct and a sufficient basis upon which the court should enjoin a conspiracy made actionable" by 42 U.S.C.A. 1985(3).

Under these circumstances, it is clear that this Court has jurisdiction of this case under the provisions of 28 U.S.C.A. 1343, this being an action to secure "equitable" relief under the provisions of 42 U.S.C.A. 1985(3), a statute "providing for the protection of civil rights".

In oral argument, however, counsel for the defendants contended that, even assuming the jurisdiction of the federal court, these plaintiffs were without a right to institute these proceedings or seek injunctive relief on behalf of the public generally. This argument is obviously without merit. As pointed out in Brewer, supra, a school board having the duty to afford children the equal protection of the law, has the correlative right to protection in the performance of its functions. The Court held this to be so, because:

> "Its right is thus intimately identified with the right of the children themselves. The right does not arise solely from the interest of the parties concerned, but from the necessity of the government itself."

It is basic, as pointed out in the Cox case, supra, that all persons should have the right to use the streets and highways of a municipality and should be entitled to equal protection of the law in so doing. It is further recognizable that the public authorities must have the right to regulate the use of these streets in order to afford all persons equal protection of the law. Therefore, if a school board, having the duty to afford children the equal protection of the law, has a right to be protected in the performance of its function, it must follow that public officials, such as these plaintiffs having, as they do, the duty of affording all persons using streets and highways equal protection of the law, have "the correlative right" to protection in the performance of their duties. If the right of a school board, because of its duty to afford school children equal protection of the law, is so intimately identified with the right of the children themselves, then it must equally follow that the right of these public officials to protection in the performance of their duties must be "intimately identified" with the right of the citizens to whom they owe a duty of providing equal protection of the law.

The only conceivable basis on which Brewer cannot constitute authority for this Court to grant injunctive relief as sought, is that initially argued by counsel for the defendant: that is, that the Brewer case involved an effort on behalf of a school board to provide integrated facilities and thus afford equal protection of the law to negro children; that other citizens who are denied equal protection of the law are not entitled to similar relief in the federal courts. Of course, all persons have civil rights regardless of race, color or creed, as counsel finally admitted under questioning by the Court. But even without any such admission on the part of counsel, it is obvious from the provisions of 42 U.S.C.A. 1985 that they were not designed to provide equal protection of the law for any one person or class of persons alone. As was pointed out in the Brewer case, the statute provides as follows:

> "Section 1985. Conspiracy to interfere with civil rights - Preventing officer from performing duties.
>
> "Depriving persons of rights and privileges.
>
> "(3) If two or more persons in any state or territory conspire * * * for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to all persons within such state or territory the equal protection of the laws * * *." (Emphasis added)

Clearly the statute was designed to afford equal protection of the law to "all" persons. Under these circumstances, if injunctive relief was properly sought and granted in the Brewer case, it may equally be sought and granted in these proceedings.

We respectfully submit, therefore, that the Court has jurisdiction of these proceedings and that these plaintiffs are properly entitled to the injunctive relief they seek. We might also say, in passing, that although the Court clearly has jurisdiction of the matter, defendants rather belatedly raise the issue of jurisdiction and do so after having themselves consented to the issuance of the preliminary injunction. The Court could hardly have jurisdiction to issue a preliminary injunction and not have jurisdiction to issue a permanent injunction.

II.

THE DEFENDANTS HAVE INTERFERED WITH DULY CONSTITUTED AUTHORITIES IN VIOLATION OF THE PROVISIONS OF 42 U.S.C.A. 1985(3).

We believe it clear that these defendants, and others acting in concert with them, did, in fact, conspire to interfere with duly constituted state officials in providing equal protection of the law to all persons, and by their overt acts in furtherance of the conspiracy, did, in fact, interfere with and hinder those officials in providing such equal protection of the law. In oral argument, it was suggested that there was no proof of a conspiracy. Obviously the record is replete with such proof.

Representatives of the defendant organization sponsored a "school" for the purpose of teaching others prepared to act in concert with them the methods by which their unlawful activities would be carried out. The mass demonstrations which took place on December 15, 1961, were under the command of representatives of the defendant organization. What was done was clearly sufficient to constitute a conspiracy under the provisions of 42 U.S.C.A. 1985, for as pointed out in Hoffman vs. Halden, 268 F.2d 280:

> "It should be axiomatic that what one person can do, two or more persons can do jointly or in concert. This is in reality all that a civil conspiracy is - concerted action or a sort of civil partnership in the commission of the injury whereby one may act for his partner and both be bound."

In addition, the defendant organization, in paragraph 12 of the answer filed herein, has admitted that it was responsible for the "peaceable assembly" which occurred in the downtown area of Baton Rouge on Friday, December 15, 1961. In paragraph 13, the Congress of Racial Equality admits that, unless restrained by this Court, it intends to continue such demonstrations "in the same or like manner".

Clearly, there was "concerted action" here on the part of this defendant organization and others acting together with it. The result of that "concerted action" was to hinder and interfere with the duly constituted authorities in providing equal protection of the law to all persons.

In defense of this "concerted action", counsel for the defendant organization suggests that it and its members has a "right" to carry on its unlawful activities because any restraint of that right would be in violation of the constitutional guarantees of freedom of speech and of assembly. But, the right of free speech and of assembly is not absolute. To the contrary, it is subject to such restraints as are necessary to preserve peace and good order in a civilized society. Thus, in the case of *Cox vs. New Hampshire*, supra, it was argued by members of "Jehovah Witnesses", a religious organization, that they were not required to comply with a New Hampshire statute requiring that a special license be secured before the "parade or procession" could be held on the public streets. Their contentions in this regard were that the requirement deprived the appellants of their rights of "freedom of worship, freedom of speech and press, and freedom of assembly". In pointing out that civil liberties are subject to restraint, the Supreme Court of the United States stated thus:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

The cited case is annotated at 133 A.L.R. 1402. The annotation is replete with citations from throughout the United States to the effect that state and local governing authorities must have the right to control and regulate the use of the public streets, highways and sidewalks if a peaceful and orderly society is to be preserved and that such right, reasonably administered, does not violate other constitutional guarantees. So it is here. We do not contend that these defendants may not espouse any cause in which they were interested; we do not contend that they may not have meetings for this purpose; we do not contend that they may not distribute pamphlets and circulars designed to promote their cause; we do contend, however, that they may not do so in such a manner as will violate the laws of the State of Louisiana and of the United States, in such a manner as will prevent and interfere with the duly constituted authorities in providing all persons equal protection of the law, and in such a manner as to completely disregard, disrupt and disorganize, public and private activities of the City of Baton Rouge.

However, even if it could be said that the action of these officials, and the injunction of this Court, could be considered a limitation upon this constitutional right, our Courts have, as indicated, long recognized that freedom of speech, expression and assembly is not an absolute right. These defendants apparently contend that the constitutional right of freedom of speech, expression and assembly gives them the absolute right to exercise these rights at any time, at any place, and in any manner which they deem desirable. The answer to such contention is obvious, and has been clearly stated by the Supreme Court of the United States in Kovacs vs. Cooper, 336 U.S. 77, 93 L.Ed. 513, 10 A.L.R. 2nd 608:

> "Of course, even the fundamental rights of the Bill of Rights are not absolute. The Saia case recognized that in this field by stating 'the hours and place of public discussion can be controlled.' It was said decades ago, in an opinion of this court delivered by Mr. Justice Holmes in Schenck v. United States, 249 US 47, 52, 63 L.Ed. 470, 473, 39 S.Ct. 247, that: 'the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. Hecklers may be expelled from assemblies and religious worship may not be disturbed by those anxious to preach a doctrine of atheism. The right to speak ones mind would often be an empty privilege in a place and at a time beyond the protecting hand of the guardian of public order.'" (Emphasis added)

This principal is still embodied in our law under the latest decisions of the Supreme Court.

Freedom of speech does not require that the City of Baton Rouge submit to a mob of two thousand people, the very mass of which will block traffic on its main thoroughfares, including a federal highway; completely block the pedestrian passage way of a street in the busiest part of town; incite prisoners in its jail to loud, boisterous and unruly conduct; and disrupt the business establishments of other citizens by blocking the aisles and thus causing some of these establishments to close. We sincerely submit that no decision of any Court of the United States has ever required a community to passively submit to such conduct by any group of citizens regardless of race, color or creed. In fact, it is worth noting that only a few weeks ago the Police of the District of Columbia arrested a lone minister for merely kneeling in prayer on the sidewalk in front of the White House, and refusing to move on (disperse) when ordered to do so by the Police.

A further and perhaps even more important effect of the "concerted action" on the part of these defendants, and others acting together with them, was to deprive thousands of citizens in the City of Baton Rouge and Parish of East Baton Rouge of any police protection at all. The mass demonstration which concentrated in the downtown area of the City of Baton Rouge on December 15, 1961, required the entire Police force, the entire Sheriff's Department and a reserve of 150 State Police in order to insure against violence and bloodshed in the immediate area of the demonstration. The result was, as testified to by the Chief of Police and the Sheriff, that the entire residential and commercial area of the Parish outside of downtown Baton Rouge was without police protection. By their massed presence and the purpose and method of their demonstration, this defendant corporation thus interfered with and hindered the duly constituted authorities in providing all of the citizens of the Parish of East Baton Rouge equal protection of the law, in a manner unequaled in the history of law enforcement in this parish.

III.

PLAINTIFFS' RIGHT TO INJUNCTIVE RELIEF

In oral argument, counsel for the defense suggested that injunctive relief could not be granted in these proceedings because they were based upon the violation of certain criminal statutes and an arrest of those violating such statutes constituted an adequate remedy at law. Thus, in his argument, counsel quoted partially from 28 Am. Jur., Injunctions, Sec. 157, as follows:

> "It is true that in early times, courts of chancery in England occasionally issued injunctions to restrain the commission of criminal acts in cases in which other tribunals were too weak to protect the poorer and more helpless classes against the power of the nobles. When the state of society became more quiet and orderly, this jurisdiction was abandoned and has never since been claimed or exercised."

Counsel simply did not read far enough from the particular section. If he had, he would have observed the following:

> "On the other hand, the mere fact that an act sought to be enjoined is punishable under the criminal laws will not preclude either the state or an individual from invoking the jurisdiction of equity for the purpose of securing an injunction whenever other facts afford a basis for the exercise of equitable jurisdiction on recognized grounds. * * * The remedy at law by criminal prosecution is not, however, always efficacious and adequate, and however reluctant equity may be to use the process of injunction against criminal and penal acts, it will not hesitate to do so where the relief is necessary to protect the rights of the public or of private individuals."

In further support of plaintiffs' right to seek injunctive relief, *American Jurisprudence* states thus:

> "The state is intrusted with the duty of protecting the public against criminal acts injurious to the civil or property rights or privileges of the public or the public health. Ordinarily recourse is had to the criminal courts for such purpose. Yet there may be cases where the remedy at law by criminal prosecution and punishment would not be adequate under the circumstances, and where the remedy in equity by injunction would furnish more effectual and complete relief. In such cases, according to the weight of authority, when the interests of the state or other political division or the interests of those entitled to its protection are thus affected by criminal acts or practices, the state, acting through its governmental agencies, may invoke the jurisdiction of equity to have them restrained. And, while there are considerable differences of opinion, and variations in the statement of rules, as to when the state or a governmental agency may thus invoke the jurisdiction of equity to restrain acts which amount to crimes, for the most part present-day cases reflect a very liberal attitude on the part of the courts in entertaining jurisdiction at the instance of the state, to enjoin such acts." *28 Am. Jur. Sec. 160*.

There can be little question here that the rights, interests and liberties of the citizens of the Parish of East Baton Rouge were and will be adversely affected by the activities of the defendant organization and those acting in concert with it. Not only did these defendants interfere with the duly constituted authorities in their effort to afford all persons equal protection of the law, but they were clearly engaged in unlawful activity having a direct bearing upon the rights, interest and liberties of the citizens of the Parish. For example, they were clearly in violation of L.R.S. 14:97, making "simple obstruction of a highway" a crime. This Louisiana statute provides in part, as follows:

> "Simple obstruction of a highway of commerce is the intentional * * * performance of any act on any * * highway * * * which will render movement thereon more difficult."

As pointed out by those who testified, because of the activities of the mass demonstrators, traffic was "snarled" in the Scotlandville area. According to the testimony of Captain Henderson, these demonstrators at one point completely occupied two entire blocks of the highway, from shoulder to shoulder. It was further obstructed and interfered with all along the line of the march from Scotlandville to downtown Baton Rouge, and in the downtown Baton Rouge area it was completely disrupted.

The demonstrators further violated the provisions of L.R.S. 14:100.1 making it a crime for any person to "willfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, * * * or other passage way * * * by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

The testimony eloquently demonstrated the fact that these defendants, and others acting in concert with them, willfully, and with complete disregard of the rights of others, obstructed the streets and the sidewalks of the City of Baton Rouge. The Court can take judicial notice of the fact that it would have been foolhardy for any person to attempt to use the areas where the mass demonstrators had collected, and those who testified stated that they could not have utilized these public facilities without having an encounter with one or more of the demonstrators.

The demonstrators were clearly in violation of L.R.S. 14:103.1, the Louisiana statute prohibiting the crowding or congregating with others on "a public street or public highway, or upon a public sidewalk" and making the failure or refusal to disperse a disturbance of the peace punishable by fine and imprisonment. These demonstrators not only prevented other citizens and persons from using the streets and sidewalks freely and in the normal, customary manner, but they physically blocked means of access to residences and offices in the Court House area to such an extent that persons were unable to reach their homes and offices, and those occupying the residences in the area were unable to even have the benefit of medical care during the time the demonstrations were in effect.

In addition, the leader of the demonstration, a so-called Reverend Cox, urged and exhorted the demonstrators to violate L.R.S. 14:59 when he suggested they descend upon the several stores in the downtown area which were on the so-called "protest list" and perform a "sit-in" demonstration for a period of one hour. Of the stores on that list, only four have lunch counters and the suggestion made by this leader of these unlawful activities was that several thousand persons should descend upon these four stores and actually take temporary possession of these private properties in violation of the provisions of L.R.S. 14:59 and L.R.S. 14:63.4. We believe that this Court can take judicial notice of the fact that any such mass invasion of private property during the height of the Christmas shopping season could not have any other effect than the complete disruption of normal business activity at the least, and violence and possible bloodshed at the most.

In view of all of this, it is abundantly clear that the police authorities of the City, Parish and State had every reason to be fearful that violence and bloodshed was imminent if the demonstrations were not broken up, and ultimately enjoined by Court action. Not only were these defendants violating the law in respect to the use of the streets and highways, and hindering and interfering with the duly constituted officials in their efforts to provide all persons with equal protection of the laws, but their actions were such as to cause disturbances in the Parish jail (located on the top floor of the Court House before which the mass demonstration was occurring) and concern among the police authorities about a possible revolt on the part of prisoners in the jail or a march on the jail to physically remove these prisoners by enthusiastic followers of the defendant's representatives.

There was certainly "clear and present danger" of violence and the actions of the defendant organization through its representatives were such as to cause reasonable concern on the part of the police authorities who were present that if the actions persisted, disturbances of the peace, violence and bloodshed would be the result.

Further, the defendant, and those acting in concert with it, were "picketing" for the purpose of compelling certain stores in the downtown area to change their alleged employment practices. The letter addressed to the manager of Rosenfield's, and offered in evidence, the several pamphlets distributed by the defendant organization, as well as paragraph 11 of the answer, clearly indicate that this was the purpose of the picketing. In so doing, those participating in these activities were violating the provisions of L.R.S. 14:103 (1) and (2), this Louisiana Statute making such activities a disturbance of the peace.

In the course of oral argument, counsel for the defendant contended that such picketing could not be prohibited without that prohibition being a violation of the constitutional guarantees of free speech and due process.

But it has been held that "a state is not required to tolerate in all places and all circumstances even peaceful picketing by an individual." *Bakery & Pastry Drivers & Helpers Local vs. Wohl*, *315 U.S. 769*, *86 L.Ed. 1178*, *62 S.Ct. 816*. Certainly, in Louisiana, under present circumstances, such picketing as was conducted by these defendants was likely to induce action of one kind or another which could lead to disturbances of the peace. Recognizing this very fact, the legislative policy reflected by L.R.S. 14:103(1)(2) was adopted.

Having jurisdiction of the case, this Court may enjoin this unlawful activity of the defendants, as well as all other similar activities, including interference with the duly constituted officials in affording equal protection of the law.

IV.

CONCLUSION

As pointed out in oral argument, this is not an instance where public officials have oppressed anyone, or violated any civil rights of any individual person or group. To the contrary, the public officials in this case clearly did everything they could to protect both persons and rights. In face of law violations of a magnitude unknown in this community, these police officials showed remarkable restraint. The fact that they did is evidenced by the fact that this mass of demonstrators, illegally marching on the streets and sidewalks, denying others of their equal right to use these public facilities, moved all the way from the Southern University campus north of Baton Rouge to the Court House under police guard, solely because of which there was no violence or bloodshed.[1]

In oral argument, counsel for the defendants made much point of the fact that no violence occurred. The very reason it did not occur is a tribute to the presence of mind of these police authorities in charge of the situation. Obviously, it is not necessary for violence to occur before equity may intervene to prevent it. Non-violence in itself can lead to violence, and the fact that one professes non-violence does not give him a right to create a situation which could lead to violence. That a continuation of these demonstrations will lead to violence is eloquently testified to by the statements of Ronnie Moore, a representative of the defendant organization, who, in answer to the pleas of the Sheriff that these matters be properly conducted in the Court, stated that "no war was won without bloodshed." Even in the oral argument of counsel for defendants at the conclusion of this case, they implied that drastic action was required to win what they conceived to be their proper rights. They suggested that "revolutions are not won by cowards" and that bloodshed perhaps was necessary to bring proper focus on their demands.

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[1] Captain Henderson testified that on one occasion the path of the marchers was obstructed by four or five white persons. Even though they had as much right as the marchers to be on the sidewalk, they were removed by deputies to prevent a threatened outbreak of violence.

We sincerely dispute these contentions by counsel for the defendants. We do not believe that violence and bloodshed have any place in any organized civilized society today; nor do we believe that persons in the exercise of free speech and free assembly must be permitted by the public authorities to go unrestrained, or may exercise their rights to an extent where others are antagonized and agitated to violent action. The holdings of the Supreme Court in the case of Cox vs. New Hampshire, supra, constitutes eloquent testimony that even the Supreme Court of the United States does not consider that civil liberties are absolute or that they override all other rights or interest of society as a whole.

The defendant organization, its agents and those who act in concert with it, contend, in essence, that the end which they seek justifies the means which they have used. It demands certain rights and privileges without being willing to accept the responsibility that goes with such privileges. It ignores the responsibility which every citizen has and owes to his community and to society generally.

They assert the proposition that injunctive relief is improper —

that the City of Baton Rouge should stand helplessly by, subject to having its entire law enforcement agencies tied up at the whim of a few officers or agents of this corporation who are not even residents of this community. The fact that law enforcement and crime prevention in other areas of the City and Parish is brought to a standstill by their actions seems not to concern them at all. And what does experience indicate in these circumstances? A little over a year ago there were a few pickets, a mild demonstration, both of which activities were protected by these very same officials. Today we have more pickets, more sit-ins, and a larger mass of people participating in the demonstrations. Furthermore, the obvious leaders of these demonstrations, avowed agents of the defendant corporation, not only refused to control the demonstrators, but affirmatively urged them to disregard the request to disband and to continue their demonstrations, including the invasion of private property.

Agents and officers of the Congress of Racial Equality have made repeated statements, quoted in the newspapers in this city and in other cities throughout the Nation, that the Courts do not act fast enough -- that they shall seek other means to secure their desires. The leader of this demonstration of December 15, 1961, has since made statements that the demonstrations would continue. Consequently, this community can only expect further such demonstrations in the future.

There can be no doubt that the action of this corporation, and those acting in concert with it, have increased the tension between the races in this community over the past year. There can also be no doubt that in the present atmosphere and existing tensions such demonstrations can easily errupt into mob violence of the very worst form. This Court may take judicial notice of existing conditions in this community under authority of L.R.S. 15:422, originally adopted as Act 2, Section 1, of 1928, which provides in part as follows:

> "Section 422. Judicial notice of specific matter.
>
> Judicial cognizance is taken of the following matters: One, * * * (6) the laws of nature, the measure of time, the facts disclosed by the calendar, the facts of geography, the geographical and political, social and racial conditions prevailing in this state; * * *." (Emphasis supplied)

The taking of judicial notice of social and racial conditions prevailing in this State has been recognized by the Supreme Court of the State of Louisiana in the case of State vs. Bessa, et al, 115 La. 259, 38 So. 985, and by the Federal Courts of the United States in United States vs. Shaughnessy, 234 F. 2d 715, Ohio Bell Telephone Company vs. Public Utility Commission, 301 U.S. 292, and in the concurring opinions of Justice Harlan and Frankfurter in the cases of Garner, Briscoe and Hoston, et al vs. State of Louisiana, 82 S.Ct. 248. If these demonstrations are allowed to continue under present circumstances, the law enforcement agencies of this community, in order to protect the demonstrators and other citizens, must tie up practically their entire personnel in one area of our community to the complete decimation of law enforcement and crime prevention in all other areas of our City and Parish. The only alternative to such an intolerable condition is to run the risk of mass riot, resulting in injury not only to the demonstrators and other citizens that might become involved, but also to the innocent citizens pursuing their normal and customary rights and pursuits. The only way this community can be protected against such a situation is for this Court to make the injunction permanent.

The conduct of these defendants remind one of the conduct of the strikers in the "sit down strike" cases of the late 1930s, which conduct was quickly declared unlawful by the Federal Courts, including the United States Supreme Court. In this regard, we believe that the language of Federal District Judge Coleman in The Calmar, 20 F. Supp. 460 (1937), which case was cited with approval by the United States Supreme Court in the case of National Labor Relations Board vs. Fansteel Metallurgical Corporation, [illegible], is particularly appropriate to the present case. After discussing the conduct of the strikers in seizing the ship and refusing to give up possession in order to obtain the higher wages which they desired, the Court made the following comment from which we would quote:

> "* * * But these men say in the present case, in effect, that 'our status of having been employees upon the property of another puts us in a preferred class, entitles us to an interest in such property, which we can appropriate, or at least hold as security, as it were, for the more complete guarantee, or the fruition, of those rights which are fundamentally ours under the law.' But the mere statement of such a theory is its own and best refutation. It is but another and less shocking way of saying, 'If the law does not give us what we want, we will make the law over.' Such theories are the handmaid of crime and anarchy. They emanate from those persons who lack that self-control which enables men to abide the slower processes of orderly government instead of yielding to that impatience which, if not restrained, will ultimately destroy the fundamental rules for human freedom upon which our form of government is based."

We respectfully submit that society generally, and this community in particular, is entitled to protection from the actions of people who say "if the law does not give us what we want, we will make over the law." — to protection from those agitators "who lack that self control which enables men to abide the slower processes of orderly government * * *."

In the final analysis, if persons or groups of persons, acting in concert, can take over the streets and sidewalks of a municipality merely because they believe some right has been violated or someone illegally arrested, then we have now reached the period in this country where special groups can destroy the public peace, the judicial and democratic systems as we know them, without recourse on the part of those constitutionally invested with authority and responsibility to preserve the public peace, and those judicial and democratic processes.

As heretofore pointed out, the City of Baton Rouge permits parades and provides a method and procedure for them. It has permitted rallies and demonstrations, but only under circumstances where the public authorities were informed of these events and had an opportunity to properly direct and handle them. But no community, here or in any other section of the country, can permit such special groups to take the law in their own hands, defy the law enforcement personnel and create a situation which can lead to violence and bloodshed, and stand idly by when they determine to do so.

Neither can any community control such situations by arrest alone. To some extent in this case, arrest--multiple arrests--in this situation would have only inflamed the demonstrators, and even greatly increased the chances of violence and bloodshed. In such cases, on proper showing, injunctive relief is not only a proper remedy, but the only remedy. Appropriately, the law recognizes the right of public officials to seek injunctive relief where the rights, interests and liberties of the public generally are being violated by the perpetration of unlawful acts.

The fact that a semblance of public order was restored immediately and without violence and bloodshed can be attributed solely to the action of this Court in issuing a temporary restraining order on the petition of these plaintiffs, and on proper showing. If that order had not been issued, similar demonstrations would have been attempted the next day, and the next, and the next, with terrible consequences to the community, as well as to those participating in the demonstrations.

We, therefore, believe that injunctive relief is the only remedy by which public peace can be restored and maintained. If the Louisiana statutes in question are invalid or unconstitutional, which we believe they are not, and cannot be, unless anarchy is to prevail, this can be decided in due course and proper proceedings. The method by which one seeks to change laws is by petition to the courts or the legislature--no one, neither these defendants nor any other citizen, has the constitutional right to seek a change in the law or to defy the authorities enforcing those laws, by the use of unlawful and illegal means.

For these reasons, we seek only to prevent further unlawful activities on the part of the Congress of Racial Equality. We believe, for the reasons above set forth, that this Court has the jurisdiction to enjoin these activities, that these plaintiffs have a right to bring this action, and that the facts and circumstances of this case justify the granting of the injunctive relief sought. We respectfully urge that this Court make permanent, the preliminary injunction issued herein.

V.

ON THE COUNTERCLAIM

We find it difficult to make any comment on the counterclaim, because defendants have not made any serious effort to urge it. It suffices to point out that the defendants did not put on one single witness, either to refute the testimony of the plaintiffs' witnesses, or to refute that law violations had occurred, or to sustain the allegations of the counterclaim.

Under these circumstances, we respectfully submit that the counterclaim should be denied and rejected.

Respectfully submitted,

BY ATTORNEYS:

R. Gordon Kean, Jr., Parish Attorney

John V. Parker, Assistant Parish Attorney

John F. Ward, Jr., Assistant District Attorney

Sargent Pitcher, District Attorney

CERTIFICATE

I, of counsel for plaintiffs, do hereby certify that a copy of the above and foregoing original memorandum on behalf of plaintiffs on the application for a permanent injunction has this day been mailed to Johnnie A. Jones, Attorney of record for the defendants, by placing same in the United States mail, postage prepaid, addressed to his office, 530 South 13th Street, Baton Rouge, Louisiana.

Baton Rouge, Louisiana, this 17th day of January, 1962.

R. Gordon Kean, Jr.

CORE
PLAQUEMINE

FEB 17 Rec'd

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

BRYAN CLEMMONS, WINGATE WHITE and
JOHN CHRISTIAN, THE LATTER IN HIS
OFFICIAL CAPACITY AS MAYOR-PRESIDENT,
AND AS SUCH MAYOR OF THE CITY OF
BATON ROUGE, LOUISIANA,

Plaintiffs

MISCELLANEOUS
NUMBER 624

VERSUS

CONGRESS OF RACIAL EQUALITY, JOHN DOE
and MARY DOE,

Defendants

ORDER IN ACCORDANCE WITH MANDATE OF UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

In accordance with and pursuant to the Mandate issued herein on January 27, 1964 by the Court of Appeals, Fifth Circuit, and filed of record herein on January 28, 1964:

IT IS ORDERED that the judgment rendered herein by this Court on February 2, 1962 be, and it is hereby set aside and vacated, and that the permanent injunction therein granted be and it is hereby dissolved.

IT IS FURTHER ORDERED, in accordance with and pursuant to said Mandate, that this suit be and it is hereby dismissed, and that appellees, Bryan Clemmons, Wingate White and John Christian, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana, be condemned, in solido, to pay all costs of this suit and appeal.

Baton Rouge, Louisiana, January 31, 1964.

(SIGNED) E. GORDON WEST

UNITED STATES DISTRICT JUDGE

546

Folder 14

State Historical Society of Wisconsin

Please Retain Original Order

Plaquemines Committee
Defense
Wendol Williams
prin Iberville High
School
Plaquemine

December 20, 1966

Mr. Lawrence Speiser
Director, Washington
Office, ACLU
1424 - 16th Street, N. W.
Washington, D. C.

Dear Larry:

While I was in Plaquemine, La., attending a conference sponsored by Marvin Rich's SEFDRE, I was informed that a Negro had been sentenced to death for rape. I assume the woman was white although I am not absolutely certain.

I was informed that the sentencing date would be set in January. Although there has been great political activity in Plaquemine, the family of the accused rapist has not been involved. In short, the family resisted all efforts at getting reliable and effective counsel -- at least as perceived by the Negro leadership.

I asked if the case was to be appealed, and was informed that the family lacked funds for a transcript to take the case to the appelate level. This struck me as being in contradiction to the court's ruling in Griffin v. Ill.

I discussed the matter with Sandy Kahn yesterday, and he was most helpfull. He suggested that I get in touch with Richard Sobol. The only difficulty is that Sobol is away for the next two weeks.

The situation is sufficiently serious so that I thought it would be helpful and important not to let anyttime pass by. I think the matter is worth checking into.

It may be possible to get further information from Ronnie Moore at the Scholarship, Education and Defense Fund for Racial Equality, 150 Nassau Street, New York, N. Y. 10038. The telephone number is 964-8210.

I would appreciate any help you can give to checking this matter out.

Sincerely,

David Cohen
Legislative Representative

DC:kw

P. S. Plaquemine is in Iberville Parish, about 20 miles from Baton Rouge. It is not in Leander Perez' territory. I do not know the name of the alleged rapist.

CORE
PLAQUEMINE

MAR 17 Rec'd

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

MINUTE ENTRY:
March 6, 1964
WEST, J.

CORRIE C. COLLINS

versus

JIMMIE H. DAVIS, etc., ET AL

CIVIL ACTION

NO. 2886

This cause came on for hearing this day on motion by defendant, Judge John R. Rarick, objecting to joinder.

PRESENT: Nils R. Douglas, Esq.
Attorney for plaintiff

Leon A. Picou, Esq.
Attorney for defendant, Judge Rarick

Jack P. F. Gremillion, Esq.
Attorney-General, State of Louisiana

All matters in this cause having been heretofore stayed pending a decision by the U. S. Supreme Court in cases of a similar nature,

IT IS ORDERED that the hearing on the motion by defendant, Judge Rarick, be, and it is hereby, STAYED.

****

Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
Carl Rachlin, Esq.
Floyd B. McKissick, Esq.
Murphy Bell, Esq.

Leon A. Picou, Esq.
Jack P. F. Gremillion, Esq.

CORE
PLAQUEMINE

MAR 26 REC'D

TOWN OF CLINTON, ET AL	20th JUDICIAL DISTRICT COURT
VERSUS A-6539	PARISH OF EAST FELICIANA
CONGRESS OF RACIAL EQUALITY, ET AL	STATE OF LOUISIANA

TO:

Carl Rachlin
Attorney~~s~~ for Congress of Racial Equality, et al
280 Broadway
New York, N.Y.

NOTICE IS HEREBY GIVEN that the temporary restraining Order issued herein on September 13,1963 is extended for an additional period of Seven (7) days until March 25th, 1964 at Four O'clock P.M. unless sooner dissolved by this court.

NOTICE is further given that the application for preliminary injunction herein is continued until and is reassigned for hearing on March 25,1964 at Two O'clock P.M.

NOTICE is further given that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this court.

Witness the Honorable John R. Rarick, Judge of said court, this 18th day of March,1964.

Inez M. Durham
Clerk of Court.

CORE
PLAQUEMINE

MAR 9 REC'D

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA

March 3, 1964

Mr. Nils R. Douglas
Attorney at Law
2211 Dryades Street
New Orleans, Louisiana

Re: No. 20960 - Congress of Racial Equality, et al
-vs- Town of Clinton and Parish of East Feliciana

Dear sir:

This is to advise that this office has received the transcript of record in the above case.

A deposit of $ 180.00 is requisite to cover the estimated costs of Court and printing of the record; this deposit is estimated as follows:

Estimated number of printed pages (80) at $2.25 per page	$ 180.00
Photostating (pages that cannot be set in type) and Inserting (booklets, patents, etc., furnished by counsel)	$
Total Estimated Cost of Printing Record	$ 180.00
Docketing Fee	$
TOTAL	$ 180.00

Usually the deposit required will exceed the actual cost of printing and the balance out of said deposit will be refunded after the record is printed.

A CERTIFIED CHECK OF EXCHANGE ON NEW YORK OR NEW ORLEANS BANK, OR MONEY ORDER FOR THIS DEPOSIT IS DUE AND PAYABLE WITHIN 15 DAYS FROM RECEIPT OF THIS REQUISITION, AS PROVIDED IN RULE 23 (2).

When the record is printed a copy will be forwarded to all counsel whose appearance has been entered, with notice as to the time for filing briefs, etc.

cc: Mr. William M. Kunstler
Mr. Carl Rachlin
Mr. F. B. McKissick
Mr. R. G. Van Buskirk
Mr. Richard H. Kilbourne

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Eugenia S. Campbell
Deputy Clerk

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

Edward W. Wadsworth
Clerk

Office of the Clerk

Post Office Box 23
New Orleans 6, La.

MEMORANDUM FROM CLERK TO COUNSEL:

The attached requisition covers the cost of printing the entire record (except for reproducing those exhibits, if any, forwarded in their original form as transmitted by the Clerk of the District Court. I am authorized to remind counsel, however, that this Court encourages counsel to reduce by designation or stipulation the size of the record to be printed, in order to minimize the costs of appeal by elimination of any unnecessary printing expense, such as that attributable to the printing of subpoenas, citations, summons, certificates of service, and any original documentary exhibits which could be conveniently considered by this Court in such form without being printed or photostated, etc., together with all other "matters not essential to the decision of the questions presented by the appeal." See Fifth Circuit Rule 23(a) (6), (a), (b) and (c); Rule 75(e), F.R.C.P. Further, Rule 23(a) provides that "the Court may refer to other (unprinted) portions" of the record on file, or hereafter "cause others to be printed if found needful."

If, therefore, counsel desire to omit any portions of the record deemed unnecessary to be printed in the light of this memorandum, this may still be done either by stipulation or by separate designations exchanged and filed in this office within fifteen (15) days from the date of the enclosed requisition. If this is done, a revised requisition will be forwarded to counsel.

EDWARD W. WADSWORTH
Clerk

CORE
PLAQUEMINE

MAR 18 REC'D

TOWN OF CLINTON, ET AL — 20TH JUDICIAL DISTRICT COURT
VERSUS — PARISH OF EAST FELICIANA
CONGRESS OF RACIAL EQUALITY, ET AL — STATE OF LOUISIANA

TO: Carl Rachlin, Attorney for CORE, et al
280 Broadway
New York, N.Y.

NOTICE IS HEREBY GIVEN that the temporary restraining Order issued herein on September 13,1963, is extended for an Seven days until Four O'clock P.M. March 18,1964, unless sooner dissolved by this court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on March 18,1964 at Two O'clock P.M.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963m remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this court.

Witness the Honorable Judge of said Court, this 11th day of March,1964.

Ivey M. Durham
Clerk of Court.

CORE
[illegible]

MAR-10 Recd

TOWN OF CLINTON, ET AL	20TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST FELICIANA
CONGRESS OF RACIAL EQUALITY, ET AL	STATE OF LOUISIANA

TO: CARL RACHLIN
280 Broadway
New York, N.H.

NOTICE IS HEREBY GIVEN that the temporary restraining Order issued herein on September 13,1963, is extended for an additional period of NINE days until March 11th,1964 at Four O'clock P.M. unless sooner dissolved by this court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on Wednesday March 11th,1964 at Two O'clock P.M.

NOTICE IF FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963, remain under the fule until the termination of the hearing on the application for preliminary injunction or until the further order of this court.

Witness the Honorable Judge of said court, this the 2nd day of March,1964.

Inez M. Durham
Clerk of Court.

TOWN OF CLINTON, ET AL
VS A-6539
CONGRESS OF RACIAL EQUALITY,
ET AL

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

TO: Carl Rachlin
280 Broadway,
New York, N.Y.

NOTICE IS HEREBY GIVEN that the temporary restraining Order issued herein on September 13,1963, is extended for an additional period of ten days until March 2,1964 at Four O'clock P.M., unless sooner dissolved by this court.

NOTICE is Further Given that the application for preliminary injunction herein is continued until and is reassigned for hearing on March 2,1964 at Ten O'clock A.M.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this court.

Witness the Honorable John R. Rarick, Judge of said court, this 21st day of February,1964.

Inez M. Durham
Clerk of Court.

CORE
Plaquemine

FEB 7 ENT'D

TOWN OF CLINTON, ET AL — 20TH JUDICIAL DISTRICT COURT

VS A-6539 — PARISH OF EAST FELICIANA

CONGRESS OF RACIAL EQUALITY, ET AL — STATE OF LOUISIANA

TO: Carl Rachlin, Atty.
280 Broadway
New York, New York

NOTICE IS HEREBY GIVEN that the temporary restraining Order issued herein on September 13,1963, is extended for an additional period of seven days until 11:45 O'clock A.M. February 6th,1964 unless sooner dissolved by this court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on Thursday Feb. 6th,1964 at 10:00 O'clock A.M.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this court.

WITNESS the Honorable Judge of said court, this 30th day of January,1964.

Inez M. Durham
Clerk of Court.

TOWN OF CLINTON, ET AL ° NUMBER A-6539
VERSUS ° 20TH JUDICIAL DISTRICT COURT
CONGRESS OF ° PARISH OF EAST FELICIANA
RACIAL EQUALITY, ET AL ° STATE OF LOUISIANA

° ° ° ° ° ° ° ° ° ° ° ° ° ° ° ° ° ° ° °

ORDER

THE COURT takes cognizance of the fact that the temporary restraining order issued herein on September 13, 1963, on the motion of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Wednesday, January 30, 1964 unless further extended or dissolved by the Court for good cause shown.

THE COURT further takes cognizance of the fact that the hearing on plaintiff's application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963, November 3, 1963, November 12, 1963, November 21, 1963, November 29, 1963, December 5, 1963, December 13, 1963, December 23, 1963, January 2, 1964, January 11, 1964 and January 21, 1964.

THE COURT being of the opinion that the reasons which necessitated the original issuance of the temporary restraining order herein still exist, and that its extension is necessary to maintain the public peace and prevent disorder and violence.

IT IS ORDERED that the temporary restraining order issued herein on September 13, 1963, be and the same is hereby extended for an additional period of seven (7) days until 11:45 a.m., February 6th, 1964, unless sooner dissolved by this Court, and

IT IS FURTHER ORDERED that the Clerk of Court notify all defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Open Court,

at Clinton, Louisiana, this 30th day of January, 196 .

JUDGE, 20TH JUDICIAL DISTRICT COURT

A TRUE AND CORRECT COPY
This 3rd day of February 1964
Marie M. Fogg, Dy.
East Feliciana Parish. Clerk of Court
STATE OF LA.

1

STATE OF LOUIS NA
VS B-4281 B-4283 B-4284 B-4285 B-4286 B-4287 B-4288 B-4289
B-4290 B-4291 B-4292 B-4293
Hebert Bell, Willie Adams, Laura Spears, Rev. R. Washington,
Rev. R.J. Transpers, Robert Thompson, Mattie Matthews, Charley
Taylor, Betty Nero, Hazel P. Matthews, Charlotte B. Greenup, and
Corrie Collins
(Public Intimidation)

NOTICE IS HEREBY GIVEN that all motions filed and scheduled for a hearing on Jan. 2nd,1964, have been upon motion of District Attorney reassigned for hearing on Special pleadings for Jan. 7th, 1964 at Nine O'Clock A.M and FURTHER NOTICE is given that the above entitled and numbered cases have been assigned for trial on April 6th,1964 at Nine O'clock A.M.

Inez M. Durham
Clerk of Court.

RECEIVED
JAN - 7 1964
DECK & ELIAS

CORE
Plaquemine
Clinton
Louisiana

TOWN OF CLINTON, ET AL

VERSUS

CONGRESS OF RACIAL EQUALITY, ET AL

NUMBER A-6539
20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

TO Edgar Herbert Vickery III, Michael Lesser, Lawrence Austin Mitchel, Rev. L.R. Taylor, Alandus F. Williamson, Arthur Antine, Matthes J. Batiest, Frank Batist, William Henry Brown, Spiver Gordon, Talbert Harris, Gorrie Collins and Ronnie Moore, through Counsel of Record, Carl Rachlin, 280 Broadway, New York, N.Y.

NOTICE IS HEREBY GIVEN that the Temporary Restraining Order issued herein on September 13,1963 is extended for an additional period of Nine (9) days until 11:45 A.M; January 11th,1964, unless sooner dissolved by this court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction is continued until and is reassigned for hearing on January 11th,1964 at Ten O'clock A.M.

NOTICE IF FURTHER GIVEN that all witnesses sequestered on the motion of either paries litigant on Oct 14,1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the Further Order of this court.

Witness the Honorable Judge of said Court, this the 2nd day of January,1964.

Inez M. Durham
Clerk of Court.

A TRUE AND CORRECT COPY
This 2 day of Jan 1964
Inez M. Durham
East Feliciana Parish. Clerk of Court
STATE OF LA.

TOWN OF CLINTON, ET AL • NUMBER A-6539
VERSUS • 20TH JUDICIAL DISTRICT COURT
CONGRESS OF RACIAL EQUALITY, ET AL • PARISH OF EAST FELICIANA
• STATE OF LOUISIANA

° °

ORDER

THE COURT takes cognizance of the fact that the temporary restraining order issued herein on September 13, 1963, on the motion of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Thursday, January 2, 1964 unless further extended or dissolved by the Court for good cause shown.

THE COURT further takes cognizance of the fact that the hearing on plaintiff's application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963, November 3, 1963, November 12, 1963, November 21, 1963, November 29, 1963, December 5, 1963, December 13, 1963, December 23rd, 1963.

THE COURT being of the opinion that the reasons which necessitated the original issuance of the temporary restraining order herein still exist, and that its extension is necessary to maintain the public peace and prevent disorder and violence.

IT IS ORDERED that the temporary restraining order issued herein on September 13, 1963, be and the same hereby is extended for an additional period of nine (9) days until 11:45 o'clock a.m., January 11th, 1964, unless sooner dissolved by this Court, and

IT IS FURTHER ORDERED that the Clerk of Court notify all defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Open Court, at Clinton, Louisiana, this 2 day of January, 1964.

JUDGE, 20TH JUDICIAL DISTRICT COURT

FILED
This 2 day of Jan 1964
Inez M. Durham
East Feliciana Parish Clerk of Court

RECEIVED
NOV 12 1963
VLADECK & ELIAS

TOWN OF CLINTON, ET AL

VS.

CONGRESS OF RACIAL EQUALITY, ET AL

NUMBER A - 6539
20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

TO: Carl Rachlin, Attorney at Law
280 Broadway
New York, N. Y.

NOTICE IS HEREBY GIVEN that the temporary restraining order issued herein on September 13, 1963 is extended for an additional period of ten (10) days until 11:45 o'clock A.M., November 13, 1963, unless sooner dissolved by this Court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on Tuesday, November 12, 1963, at 10:00 o'clock A.M.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14, 1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this Court. -

WITNESS the Honorable Judge of said Court, this 4th day of November, A.D., 1963.

Inez M. Durham
CLERK OF COURT

TOWN OF CLINTON ET AL : NUMBER A - 6539
vs :
CONGRESS OF RACIAL EQUALITY : 20TH JUDICIAL DISTRICT COURT
ET AL : PARISH OF EAST FELICIANA
: STATE OF LOUISIANA

- -

ORDER

The Court takes cognizance of the fact that the temporary restraining order issued herein on September 13, 1963, on the motion of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Sunday, November 3, 1963, unless further extended by the Court for good cause shown.

The Court further takes cognizance of the fact that the hearing on plaintiffs' application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963,

The Court being of the opinion that the reasons which necessitated the original issuance of the temporary restraining order herein still exist, and that its extension is necessary to maintain the public peace and prevent disorder and violence,

IT IS ORDERED that the temporary restraining order issued herein on September 13, 1963, be and the same hereby is extended for an additional period of ten (10) days until 11:45 o'clock a.m., November 13, 1963, unless sooner dissolved by this Court, and

IT IS FURTHER ORDERED that the Clerk of Court notify all defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Chambers at Clinton, Louisiana, this 3rd day of [illegible]

St. John R. Rarick

[illegible] COURT

FILED Nov. 3, [illegible]
12:30 P.M.
Inez M. Durham, Clerk.

A TRUE AND CORRECT COPY
This [illegible] day of NOV 1963
Inez M. Durham
East Feliciana Parish. Clerk of Court
STATE OF LA.

NSTLER & KUNSTLER
TTORNEYS AT LAW
11 FIFTH AVENUE
NEW YORK 17, N. Y.
MURRAY HILL 2-8317

10-23

Carl:

Victory is still
, particularly when
so rare.

As ever,

ED

Bill

ELIAS

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 20,960

U. S. CO[illegible] APPEALS
FILED
OCT 22 1963
EDWARD W. WADSWO
CL

TOWN OF CLINTON and PARISH OF EAST FELICIANA,

Plaintiffs,

v.

CONGRESS OF RACIAL EQUALITY, et al,

Appellants.

Before TUTTLE, Chief Judge, BROWN and BELL, Circuit Judges.

BY THE COURT:

This matter came on for hearing on the motion of the Town of Clinton and Parish of East Feliciana to vacate the stay order issued by this Court on October 14, 1963. Upon argument of counsel the Court determined that the stay should not be vacated pending a determination by this Court on the merits of the contentions of the appellants in this Court as to the review of the order of Remand by the District Court. The Court requeste both parties to submit suggested language under which an appropri stay could be made effective pending this appeal. No form of st or suggestion having been submitted by either party, it is hereb ORDERED that the stay order dated October 14, 1963, be and the same is hereby continued in effect, the same to remain in effect until the further order of this Court.

This 22nd day of October, 1963.

/s/ ELBERT P. TUTTLE
Elbert P. Tuttle
Chief Judge

/s/ JOHN R. BROWN
John R. Brown
U. S. Circuit Judge

/s/ GRIFFIN B. BELL
Griffin B. Bell
U. S. Circuit Judge

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N.Y.
MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

CABLE ADDRESS
"KANDKLEX"

RECEIVED
OCT 23 1963
VLADECK & ELIAS

October 22, 1963

Carl Rachlin, Esq.
280 Broadway
New York, New York

Re: Clinton, Louisiana.

Dear Carl:

I didn't get a chance to call you after the argument last Friday as I had to go to Jackson. But I know that Collins, Douglas and Elie kept you informed.

We thought that the argument went very well and there is no question that the stay will be extended beyond the 24th. In addition, I have prepared and forwarded to both the court and the Clinton attorneys briefs incorporating much of the Danville brief as far as the appealability of removal is concerned. We are also preparing a digest of the various civil rights removal statutes from 1866 to date and an analysis of Footnote 5 to the Supreme Court's opinion in Gay v. Ruff, all of which we are in the process of doing.

I hope that you will permit us to work on the appeal should the Fifth Circuit decide to hear it. Incidentally, we just removed the prayer cases in Jackson, much to Cox's dismay.

I am enclosing a bill for our Clinton services.

Cordially yours,

Bill
William M. Kunstler

WMK:bkf

KUNSTLER & KUNSTLER
ATTORNEYS AT LAW

TELEPHONE MURRAY HILL 2-8317

511 FIFTH AVENUE
NEW YORK 17, N. Y.

Carl Rachlin, Esq.
280 Broadway
New York, New York

October 22, 1963

To Professional Services Rendered

Fee		$ 250	00
Expenses: Meals, lodging, taxis, photostats, etc.		35	00
	Total	$ 285	00

CORE –
Plaquemine

December 11, 1963

Mr. Richard Haley, Associate National
Director
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Richard:

Enclosed please find two (2) invoices from Bill Kunstler in the case in which, at the request of Collins, Douglas & Elie, we asked him to argue before the Fifth Circuit. I trust you will take care of this as promptly as possible.

Sincerely,

CARL RACHLIN

CR:cr
encs.

[illegible]

RECEIVED
DEC 13 1963
[illegible] & ELIAS

TOWN OF CLINTON, ET AL	NUMBER A6539
VERSUS	20TH JUDICIAL DISTRICT COURT
	PARISH OF EAST FELICIANA
CONGRESS OF RACIAL EQUALITY, ET AL	STATE OF LOUISIANA

TO: Edgar Herbert Vickery III , Michael Lesser, Lawrence Austin Mitchell, Brenda Sexton
Rev. L.R. Taylor, Alandus F. Williamson, Arthur Antine, Matthews J. Battiest,
Frank Battist, William Henry Brown, Spiver Gordon, Talbert Harris, Herbert Bell,
Charlotte Greenup, Hazel P. Matthews, Betty Nero,Charlie Taylor, Mattie Matthews,
~~Robert Thompson, Rev. Roger Transphers,~~ Rev. Robert Washington, Laura Spears,
and Willie Adams,
Through Counsel of record : Carl Rachlin, 280 Broadway, New York, N.Y.

NOTICE IS HEREBY GIVEN that the temporary restraining order issued herein on September 13,1963 is extended for an additional period of eight (8) days until 11:45 A.M. December 13,1963, unless sooner dissolved by this court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on Friday December 13,1963, at 10:00 O'clock A.M.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this Court.

Witness the Honorable Judge of said court, this the 5th day of December A.D. 1963.

Inez M. Dunham

Clerk of Court.

CORE
Plaquemine

OE

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DEC [illegible] 1963
VLADECK & ELIAS

TOWN OF CLINTON, ET AL

VERSUS

CONGRESS OF RACIAL EQUALITY,
ET AL

Number A-6539

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

TO ~~Edgar Herbert Vickery III, Michael Lesser, Lawrence Austin Mitchel~~
~~Rev. XX L.R. Taylor, Alandus F. Williamson, Arthur Antine,~~
~~Matthew J. Battiest, Frank Battist, William Henry Brown,~~
~~Spiver Gordon, Talbert Harris Corrie Collins and Ronnie Moore~~

Through Counsel of Record: Carl Rachlin, 280 Broadway, New York N.Y.

NOTICE IS HEREBY GIVEN that the Temporary Restraining Order issued herein on September 13,1963 is extended for an additonal Ten (10) days until December 23,1963 at 11:45 A.M., unless sooner dissolved by this court.

Notice is further given that the application for preliminary injunction herein is continued until and is reassigned for hearing December 23,1963 at Ten O'clock A.M.

Notice is further given that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963, remain under the rule until termination of the hearing on the application for preliminary injunction or until the further order of this court.

Witness the Honorable Judge of said Court, this 13th day of December,1963.

Iney M. Durham
Clerk of Court.

A TRUE AND CORRECT COPY
This 13 day of Dec 1963
Inez M. Durham
East Feliciana Parish, Clerk of Court

WN OF CLINTON, ET AL ○ NUMBER A-653

VERSUS ○ 20TH JUDICIAL DISTRICT COURT

CONGRESS OF ○ PARISH OF EAST FELICIANA

RACIAL EQUALITY, ET AL ○ STATE OF LOUISIANA

○ ○

ORDER

THE COURT takes cognizance of the fact that the temporary [illegible] September 13, 1963, [illegible] of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Friday, December 13, 1963, unless further extended or dissolved by the Court for good cause shown.

THE COURT further takes cognizance of the fact that the hearing on plaintiff's application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963, November 3, 1963, November 12, 1963, November 21, 1963 and November 29, 1963 and December 5, 1963.

[illegible] nes- [illegible] re- [illegible] maintain [illegible] peace and prevent disorder and violence.

IT IS ORDERED that the temporary restraining order issued [illegible] September 13, 1963, be and the same is hereby extended for [illegible] period of ten (10) days [illegible] a.m., [illegible] 23rd, 1963, unless sooner dissolved [illegible]

IT IS FURTHER ORDERED that [illegible] defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Open Court, at Clinton, Louisiana, this 13th day of December, 1963.

JUDGE, 20TH JUDICIAL DISTRICT COURT

Filed
12-13-63
Inez M. Durham Clerk

Plaquemine

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VLADECK & ELIAS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

CORRIE C. COLLINS

Plaintiff

vs.

JIMMIE H. DAVIS, ET ALS

COMPLAINT

CIVIL ACTION

NO. 2886

MOTION TO STAY PROCEEDINGS

On joint motion of Robert F. Collins, Nils R. Douglas, and Lolis E. Elie, Attorneys for Corrie C. Collins, and Jack P. F. Gremillion, Attorney General for the State of Louisiana, individually and as counsel for defendants, Jimmie H. Davis, individually and as the Governor of the State of Louisiana, Jack P. F. Gremillion, individually and as the Attorney General of the State of Louisiana, Joseph S. Felps, individually and as Mayor of the Town of Clinton, State of Louisiana, L. E. Brian, individually and as President of the Police Jury for the Parish of East Feliciana, Arch V. Doughty, individually and as Sheriff of the Parish of East Feliciana, State of Louisiana, and Richard Kilbourne, individually and as District Attorney for the 20th Judicial District of Louisiana in and for the Parish of East Feliciana, and on suggesting to the Court that the complaint of petitioner attacks the constitutionality of State statutes dealing with criminal trespass, defamation and disturbing the peace as the same applies to "sit ins" and,

On further suggesting that there is presently pending before the United States Supreme Court many cases (No. 6 - Griffin v. Maryland; No. 12- Bell v. Maryland; No. 9 - Barr v. Columbia; No. 10 - Bouie v. Columbia; No. 60 - Robinson v. Florida; see 32 L. W. 3145, 32 L. W. 3187) which cases are directly in point with, and involve identically similar statutes from other states, and which have already been argued and will be decided in the near future, and

On further suggesting that it would be an unnecessary usurpation of the time of this Honorable Court, plaintiff and defendants to try this matter before the rendition of the United States Supreme Court's imminent decisions in the identical matters presently pending before it:

IT IS ORDERED, that this matter be and it is hereby stayed pending the United States Supreme Court decisions in similar cases presently pending before it or until further orders of this Court.

New Orleans, Louisiana, this 17th day of December, 1963.

E. Gordon West

JUDGE

Respectfully submitted,

JACK P. F. GREMILLION
ATTORNEY GENERAL
STATE OF LOUISIANA

Assistants Attorney General

M. E. Culligan

Weldon A. Cousins

Henry J. Roberts, Jr.

John E. Jackson, Jr.

George M. Ponder

William P. Schuler

Attorneys for Plaintiff;

Robert F. Collins

Nils R. Douglas

Lolis E. Elie

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DEC-9 1963
VLADECK & ELIAS

CORE
Plaquemine

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

CORRIC C. COLLINS

Plaintiff

VS.

JIMMIE H. DAVIS, INDIVIDUALLY AND AS THE GOVERNOR OF THE STATE OF LOUISIANA: JACK P.F. GREMILLION, INDIVIDUALLY AND AS THE ATTORNEY GENERAL OF THE STATE OF LA: JOSEPH C. FELPS, INDIVIDUALLY AND AS MAYOR OF THE TOWN OF CLINTON, STATE OF LA: L. E. BRIAN, INDIVIDUALLY AND AS PRESIDENT OF THE POLICE JURY FOR THE PARISH OF EAST FELICIANA: ARCH V. DOUGHTY, INDIVIDUALLY AND AS SHERIFF OF THE PARISH OF EAST FELICIANA, STATE OF LA: RICHARD KILBOURNE, INDIVIDUALLY AND AS DISTRICT ATTORNEY FOR THE 20th JUDICIAL DISTRICT OF LA., IN AND FOR THE PARISH OF EAST FELICIANA: and JOHN R. RARICK, INDIVIDUALLY AND AS JUDGE OF THE 20TH JUDICIAL DISTRICT COURT

Defendants

CIVIL ACTION NO. 2886

* *

MOTION FOR AN EXTENSION OF TIME WITHIN WHICH TO PLEAD

TO THE HONORABLE UNITED STATES DISTRICT COURT WITHIN AND FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION:

On motion of defendant, John R. Rarick, and upon suggesting to the Court that additional time is needed within which to file pleadings herein due to the fact that counsel for defendant, John R. Rarick, has been unable to have a conference with reference to this matter and it is necess that he be granted an extension of twenty (20) days w which to file pleadings herein:

IT IS ORDERED that said defendant be gr additional twenty (20) days within which to pl

(Motion & Order - Extension of Time - Collins vs. Jimmie
H. Davis, et al - No.2886 - cont'd)

Baton Rouge, La., this 2nd day of December, 1963.

(SIGNED) E. GORDON WEST
Judge

BY ATTORNEY

Leon A. Picou, Jr.,
St. Francisville, La.,
Counsel for Jno. R. Rarick

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

CORRIE E. COLLINS, Plaintiff,	
vs.	CIVIL ACTION NO. 2886
JIMMIE H. DAVIS, Governor of the State of Louisiana, ET ALS, Defendants.	

The Honorable E. Gordon West, United States District Judge for the Eastern District of Louisiana, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable Herbert W. Christenberry, United States District Judge for the Eastern District of Louisiana, to serve with Judge West as members of, and with him to constitute the said court to hear and determine the action.

WITNESS my hand this 13th day of November, 1963.

Elbert P. Tuttle
Chief Judge
Fifth Circuit.

Cope Plaquemine

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

MINUTE ENTRY:
November 1, 1963
WEST, J.

REV. JOSEPH CARTER

versus

WILLIAM C. PERCY, JR., etc., ET AL.

CIVIL ACTION

NO. 2854

This cause came on for hearing this day on motion by defendant, Fletcher Harvey, to dismiss.

PRESENT: Murphy W. Bell, Esq.
Attorney for plaintiff

Jack P. F. Gremillion, Esq. Attorney-General, State of Louisiana Thomas W. McFerrin, Esq. Special Counsel, State of Louisiana	For defendant, Fletcher Harvey

IT IS ORDERED that the motion by defendant, Fletcher Harvey, to dismiss be, and it is hereby, DENIED.

****

VLADEC.

Murphy W. Bell, Esq.
Nils R. Douglas, Esq.
Robert F. Collins, Esq.
Lolis E. Elie, Esq.
Carl Rachlin, Esq.
Floyd B. McKissick, Esq.

Jack P. F. Gremillion, Esq.
Frank L. Dobson, Esq.
Thomas W. McFerrin, Esq.
Sam J. D'Amico, Esq.
Stephen Dart, Esq.
Lane Fisher, Esq.

CORE

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[illegible] & [illegible]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

REV. JOSEPH CARTER :

VS. :

WILLIAM C. PERCY, JR., INDIVIDUALLY AND AS THE SHERIFF OF THE PARISH OF WEST FELICIANA, LOUISIANA :

AND :

FLETCHER HARVEY, INDIVIDUALLY AND AS THE REGISTRAR OF VOTERS OF THE PARISH OF WEST FELICIANA LOUISIANA, JOHN DOE AND HENRY DOE :

NUMBER 2854

CIVIL ACTION

MOTION FOR AN EXTENSION OF TIME WITHIN WHICH TO PLEAD

TO THE HONORABLE UNITED STATES DISTRICT COURT WITHIN AND FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE, DIVISION:

On motion of defendant, William C. Percy, Jr., upon suggesting to the Court that additional time is needed within which to file pleadings herein due to the fact that counsel for defendant has been unable to have a conference with reference to this matter and it is necessary that he be granted an extension of twenty (20) days within which to file pleadings herein:

IT IS ORDERED that said defendant be granted an additional twenty (20) days within which to plead herein.

Baton Rouge, Louisiana, this 6th day of November, 1963.

(SIGNED) E. GORDON WEST,

JUDGE

By Attorneys:

D'AMICO & CURET

Sam J. D'Amico

Sam J. D'Amico
610 Reymond Building
Baton Rouge, Louisiana

M.2[illegible]

A TRUE AND CORRECT COPY

CORE
Plaquemine

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VLADECK & ELIAS

TOWN OF CLINTON, ET AL

VS.

CONGRESS OF RACIAL EQUALITY, ET AL

NUMBER: A - 6 5 3 9
20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

TO: Attorney Carl Rachlin
280 Broadway
New York, N. Y.

NOTICE IS HEREBY GIVEN that the temporary restraining order issued herein on September 13, 1963 is extended for an additional period of six (6) days until 11:45 o'clock a.m., December 5, 1963, unless sooner dissolved by this Court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on Thursday, December 5, 1963, at 10:00 o'clock a.m.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14, 1963 remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this Court.

WITNESS the Honorable Judge of said Court, this 29th day of November, A.D., 1963.

Lucy M. Durham
CLERK OF COURT

A TRUE AND CORRECT COPY
This day of Nov. 1963
Mary F. Horne, Dy
East Feliciana Parish. Clerk of Court
STATE OF LA.

TOWN OF CLINTON, ET AL
VERSUS
CONGRESS OF RACIAL EQUALITY, ET AL

NUMBER A-6539
20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

* * *

ORDER

THE COURT takes cognizance of the fact that the temporary restraining order issued herein on September 13, 1963, on the motion of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Sunday, December 1, 1963, unless further extended or dissolved by the Court for good cause shown.

THE COURT further takes cognizance of the fact that the hearing on plaintiff's application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963 and November 3, 1963 and November 12, 1963 and November 21, 1963.

THE COURT being of the opinion that the reasons which necessitated the original issuance of the temporary restraining order herein still exist, and that its extension is necessary to maintain the public peace and prevent disorder and violence,

IT IS ORDERED that the temporary restraining order issued herein on September 13, 1963, be and the same hereby is extended for an additional period of ~~ten (10)~~ six (6) R days until 11:45 o'clock a.m., December 5th R, 1963, unless sooner dissolved by this Court, and

IT IS FURTHER ORDERED that the Clerk of Court notify all defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Chambers at Clinton, Louisiana, this 29 day of November, 1963.

John R. Rarick
JUDGE, 20TH JUDICIAL DISTRICT COURT

Filed 11-29-63
Inez M. Dunham, Clerk

[illegible]

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N.Y.
MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

CABLE ADDRESS
"KANDKLEX"

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NOV 21 1963
VLADECK & ELIAS

November 20, 1963

Hon. Elbert P. Tuttle
Chief Judge
U. S. Court of Appeals for the Fifth Circuit
Old Post Office Building
Atlanta, Georgia

Re: CORE v. Clinton
No. 20,960

Dear Judge Tuttle:

There is some confusion on this end as to when the appellant's brief in the above matter is to be submitted.

I was under the impression that, if the requested stay was granted, the appeal would be set down in the regular course for full argument on (1) appealability of remand orders and (2) substantive merits of removal.

If this is not so, then I am prepared to submit our brief within five days from receipt of notice that the panel desires our brief at this time.

I would appreceiate hearing from you as soon as possible as we most certainly want to brief this question fully as we consider it an exceptionally important one.

Very truly yours,

William M. Kunstler

WMK:bkf

CORE Plaquemine

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

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VLADECK & ELIAS

COPY

November 8, 1963

Lolis E. Elie, Esq.
Collins, Douglas & Elie
2211 Dryades Street
New Orleans 13, La.

Dear Lolis:

Thanks for your letter of October 31 and the enclosure. Carl and I are eagerly looking forward to receiving a copy of the three-judge court complaint which you must have filed by now in Judge West's court in the Clinton case.

The way we understand the law, if an application for the convening of the three-judge court is denied, there may be no relief short of applying to the United States Supreme Court for a writ of mandamus, ordering the district court to whom the application was made to appropriately communicate with the chief judge of the Court of Appeals for the purpose of setting up such court. Should this be necessary, we are ready and willing to be of any possible assistance to you.

Kindest regards.

Cordially,

Marvin

Marvin Moses Karpatkin

MMK:eb
cc: Carl Rachlin, Esq.

CORE
Plaquemines

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS 16, LA.

November 21, 1963

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VLADECK & ELIAS

Messrs. Nils R. Douglas and
Robert F. Collins
Attorneys at Law
New Orleans, Louisiana

Mr. William M. Kunstler
Attorney at Law
New York, New York

Mr. Carl Rachlin
Attorney at Law
New York, New York

Mr. Murphy W. Bell
A Attorney at Law
Baton Rouge, Louisiana

Mr. F. B. McKissick
Attorney at Law
Durham, North Carolina

Re: No. 20960 - Congress of Racial Equality, et al
-vs- Town of Clinton and Parish of East Feliciana.

Gentlemen:

Upon the hearing of this case in Atlanta the Court requested that counsel for the appellants furnish certain legislative materials. These materials were to be submitted promptly in view of the emergency nature of the pending proceedings. The Court has directed me to inform you that any such materials which you desire to submit should be filed not later than December 2, 1963 as the Court will proceed then to dispose of the matter.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Clara R. James
Chief Deputy Clerk

/bwc
cc: Mr. R. G. Van Buskirk
Mr. Richard H. Kilbourne

THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

CORE
Plaquemine

TOWN OF CLINTON, ET AL • NUMBER 539
versus • 20TH JUDICIAL DISTRICT COURT
CONGRESS OF RACIAL EQUALITY, ET AL • PARISH OF EAST FELICIANA
• STATE OF LOUISIANA

• • • • • • • • • • • • • • • • • • • •

ORDER

THE COURT takes cognizance of the fact that the temporary restraining order issued herein on September 13, 1963, on the motion of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Friday, November 22, 1963, unless further extended or dissolved by the Court for good cause shown.

THE COURT further takes cognizance of the fact that the hearing on plaintiff's application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963 and November 3, 1963 and November 12, 1963.

THE COURT being of the opinion that the reasons which necessitated the original issuance of the temporary restraining order herein still exist, and that its extension is necessary to maintain the public peace and prevent disorder and violence,

IT IS ORDERED that the temporary restraining order issued herein on September 13, 1963, be and the same hereby is extended for an additional period of ten (10) days until 11:45 o'clock a.m., December 1, 1963, unless sooner dissolved by this Court, and

24

IT IS FURTHER ORDERED that the Clerk of Court notify all defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Chambers at Clinton, Louisiana, this 21st day of November, 1963.

s/John R. Rarick
JUDGE, 20TH JUDICIAL DISTRICT COURT

A TRUE AND CORRECT COPY
This 21 day of Nov.
Inez M. Durham
East Feliciana Parish, Clerk of Court
STATE OF LA.

Filed Nov. 21, 1963
10:30 A.M.
Inez M. Durham, Clerk

TOWN OF CLINTON, ET AL

VS.

CONGRESS OF RACIAL EQUALITY, ET AL

NUMBER: A - [illegible]

20TH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

TO: Carl Rachlin
280 Broadway
New York, N. Y.

NOTICE IS HEREBY GIVEN that the temporary restraining order issued herein on September 13, 1963 is extended for an additional period of eight (8) days until 11:45 o'clock a.m., November 29, 1963, unless sooner dissolved by this Court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on Friday, November 29, 1963, at 10:00 o'clock a.m.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14, 1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this Court.

WITNESS the Honorable Judge of said Court, this 21st day of November, A.D., 1963.

CLERK OF COURT

Plaquement

TOWN OF CLINTON, ET AL	•	NUMBER A-6539
versus	•	20TH JUDICIAL DISTRICT COURT
CONGRESS OF RACIAL EQUALITY, ET AL	•	PARISH OF EAST FELICIANA
	•	STATE OF LOUISIANA

• •

ORDER

THE COURT takes cognizance of the fact that the temporary restraining order issued herein on September 13, 1963, on the motion of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Friday, November 22, 1963, unless further extended or dissolved by the Court for good cause shown.

THE COURT further takes cognizance of the fact that the hearing on plaintiff's application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963 and November 3, 1963 and November 12, 1963.

THE COURT being of the opinion that the reasons which necessitated the original issuance of the temporary restraining order herein still exist, and that its extension is necessary to maintain the public peace and prevent disorder and violence,

IT IS ORDERED that the temporary restraining order issued herein on September 13, 1963, be and the same hereby is extended for an additional period of ten (10) days until 11:45 o'clock a.m., December 1, 1963, unless sooner dissolved by this Court, and

IT IS FURTHER ORDERED that the Clerk of Court notify all defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Chambers at Clinton, Louisiana, this 21st day of November, 1963.

S/ John R. Rarick
JUDGE, 20TH JUDICIAL DISTRICT COURT

A TRUE AND CORRECT CO
This 4 day of Nov
Inez M. D
East Feliciana Parish Cl
STATE OF LA.

Filed Nov. 21, 1963
10:30 A.M.
Inez M. Durham, Clerk

CORE-
Plaquemine

November 20, 1963

William Kunstler, Esq.
511 Fifth Avenue
New York 17, N. Y.

Re: Clinton v. CORE

Dear Bill:

Thanks for the copy of your memorandum to Judge Tuttle of November 15th. It is certainly an interesting and intricate argument which I urgently hope will bring the desired and necessary result. I must confess that I find myself a little concerned about the short paragraph #8 of your memorandum.

With kindest personal regards,

Cordially,

CARL RACHLIN

CR/hm
cc: Lolis Elie
Floyd McKissick

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N.Y.
MURRAY HILL 2-8317

CABLE ADDRESS

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NOV 20 1963
VLADECK & ELIAS

November 15, 1963

Hon. Elbert P. Tuttle
Chief Judge
U. S. Court of Appeals for the Fifth Circuit
Old Post Office Building
Atlanta, Georgia

Re: Clinton v. CORE NO. 20,960

Dear Judge Tuttle:

Pursuant to Judge Brown's request at the argument of the motion of the Town of Clinton to vacate a stay previously issued by this Court, the language of the respective civil rights removal statutes is as follows:

1. Provisions for removing civil rights cases from state to federal courts first appeared in an act of Congress entitled Citizenship, April 9, 1866 - the Civil Rights Act of 1866.

Section 3.

[illegible] Act

"The district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several states, cognizance of all crimes and offences committed against the provisions of this act, and also concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the state or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any state court, against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespass or wrongs done or committed by virtue or under color of authority derived from this act, or the act establishing a bureau for the relief of freedmen and refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the 'Act relating to habeas corpus and regulating judicial proceedings in certain cases', approved March 3, 1863, and all acts amendatory thereof." 12 Stat. 756.

(a
(b
c
d)

2. The act of March 3, 1863 relating to habeas corpus described the procedure which was to be followed in removal cases. The pertinent portion of this act was amended on May 11, 1866 to read:

> "The right of removal from the state court to the circuit court of the United States, provided in the fifth section of the act to which this is amendatory, may be exercised after the appearance of the defendant and the filing of his plea or other defence in said court, or at any term of said court subsequent to the term when the appearance is entered, and before a jury is empaneled to try the same; but nothing herein contained shall be held to abridge the right of such removal after final judgment in the state court, nor shall it be necessary in the state court to offer or give surety for the filing of copies in the circuit court of the United States; but, on the filing of the petition, verified as provided in said fifth section, the further proceedings in the state court shall cease, and not be resumed until a certificate under the seal of the circuit court of the United States, stating that petitioner has failed to file copies in the said circuit court, at the next term, is produced. 14 Stat. 46

3. An act of Congress of May 31, 1870, the Civil Rights Act of 1870, re-enacted the Civil Rights Act of 1866 as section 18 of the former act. 16 Stat. 144.

4. With the publication of the Revised Statutes in 1873, the civil rights removal statute became Rev. Stat. 641.

Section 641.

> "When any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespass or wrongs, made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial, into the next circuit

(where such action is

court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant, petitioning for removal, copies of said process against him, and of all pleadings depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the circuit court on the first day of its session, the cause shall proceed thereon in the same manner as if it had been brought there by original process; and if the said clerk refuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the circuit court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect, of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of plaintiff, and such dismissal shall be a bar to to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the circuit court as herein provided, a certificate, under the seal of the circuit court, stating such failure, shall be given, and upon the production thereof in said State court, the cause shall proceed therein as if no petition for a removal had been filed. [see #1977].

5. The removal act of March 3, 1875 dealt only with removal in ordinary civil suits and effected no change in the wording of the civil rights removal statute, Rev. Stat. 641. However, Section 5 of Chapter 137 of the 1875 act entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes" provided:

Section 5.

"That if, in any suit commenced in a circuit court or removed from a state court to a circuit court of the United States, it shall appear to the satisfaction of

> the said circuit court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed as justice may require, and shall make such order as to costs as shall be just; but the order of said circuit court dismissing or remanding said cause to the State court shall be reviewable by the Supreme Court on writ of error or appeal, as the case may be." 18 Stat 473.

6. This provision for review of remand orders was repealed as to ordinary civil suits by an act of Congress March 3, 1887 as follows:

Section 6.

> "That the last paragraph of section five of the act of Congress, approved March 3, 1875 entitled 'An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes' . . . be . . . hereby repealed . . ."

7. However, the civil rights removal statue was not affected by any of the repealing provisions of the 1887 act. This was provided for in section 5 of the act of 1887:

Section 5.

> "That nothing in this act shall be held deemed, or construed to repeal or affect any jurisdiction or right mentioned in . . . section 641 . . . of the Revised Statutes of the United States."

The wording of the civil rights removal statute remained unchanged with the enactment of the Judicial Code. This statute first appeared as Title 28 United States Code section 74.

8. The present civil rights removal statute, 28 U.S.C. 1433, adopted June 25, 1948, is derived from the above statutes.

I hope that this is what Judge Brown had in mind. For the convenience of the Court, I am enclosing three copies of this letter and I have sent a fourth to Hon. R. G. Van Buskirk, special counsel for appelles.

I had not forwarded this information to the Court previously because I thought that it would be included in appellant's brief at the full argument on the appealability of a remand under 28 U.S.C. 1443 and the merits of the appeal, which I assume will appear on the regular calendar of this Court in the future.

Very truly yours,

William M. Kunstler

WMK:bkf
cc.: Hon. R. G. Van Buskirk
Carl Rachlin, Esq.
F. B. McKissick, Esq.
Collins, Douglas & Elie, Esqs.
Murphy Bell, Esq.

THE FOLLOWING PAGES ARE THE BEST AVAILABLE.

RECEIVED
NOV [illegible]
VLADECK & ELIAS

TOWN OF CLINTON, ET AL

VS A-6539

CONGRESS OF RACIAL EQUALITY, ET AL

NUMBER A-6539

20TH JUDICIAL DISTRICT COURT
PARISH OF EAST FELICIANA
STATE OF LOUISIANA

TO: Carl Rachlin, Attorney at Law
280 Broadway
New York, N. Y.

NOTICE IS HEREBY GIVEN that the temporary restraining order issued herein on September 13,1963, be and the same hereby is extended for an additional period of Ten (10) days until [illegible] O'clock A.M., November [illegible] 1963, unless sooner dissolved by this Court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued and is reassigned for hearing on Thursday [illegible] at Ten O'clock A.M.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14,1963, remain under the rule until the termination of the hearing on the application for preliminary injunction or until the further order of this Court.

WITNESS the Honorable Judge of said Court, this [illegible] day of [illegible]

[illegible]

Notice via reg. mail, return receipt, mailed to the following, on [illegible]
1963.

TOWN OF CLINTON, ET AL	•	NUMBER A-6539
VERSUS	•	20TH JUDICIAL DISTRICT COURT
CONGRESS OF RACIAL EQUALITY, ET AL	•	PARISH OF EAST FELICIANA
	•	STATE OF LOUISIANA

• •

ORDER

The Court takes cognisance of the fact that the temporary restraining order issued herein on September 13, 1963, on the motion of the plaintiffs, and extended from time to time since issuance, will expire at 11:45 o'clock a.m., on Wednesday, November 13, 1963, unless further extended or dissolved by the Court for good cause shown.

The Court further takes cognisance of the fact that the hearing on plaintiffs' application for a preliminary injunction has been continued past the expiration date of said temporary restraining order for the reasons set forth in the Order of this Court entered herein in Open Court on October 24, 1963 and November 3, 1963.

The Court being of the opinion that the reasons which necessitated the original issuance of the temporary restraining order herein still exist, and that its extension is necessary to maintain the public peace and prevent disorder and violence, -

IT IS ORDERED that the temporary restraining order issued herein on September 13, 1963, be and the same hereby is extended for an additional period of ten (10) days until 11:45 o'clock a.m., November 22, 1963, unless sooner dissolved by this Court, and

IT IS FURTHER ORDERED that the Clerk of Court notify all defendants herein of the terms of this Order by mailing a copy of the same, by Registered Mail, to their counsel of record.

THUS DONE, READ AND SIGNED in Chambers at Clinton, Louisiana, this 12th day of November, 1963.

John R. Rarick

JUDGE, 20TH JUDICIAL DISTRICT COURT

Filed:

12 November 63

Inez M. Durham

A TRUE AND CORRECT COPY

This 12 day of Nov 1963

Inez M. Durham

East Feliciana Parish Clerk of Court

STATE OF LA.

CORE
#149

RECEIVED
OCT 14
VLADECK & ELIAS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

REV. JOSEPH CARTER :

VS. : NUMBER 2854

WILLIAM C. PERCY, JR., : CIVIL ACTION
INDIVIDUALLY AND AS THE
SHERIFF OF THE PARISH OF
WEST FELICIANA, LOUISIANA

AND

FLETCHER HARVEY, INDIVIDUALLY :
AND AS THE REGISTRAR OF VOTERS
OF THE PARISH OF WEST FELICIANA,
LOUISIANA, JOHN DOE AND HENRY DOE :

MOTION FOR AN EXTENSION OF TIME WITHIN WHICH TO PLEAD

TO THE HONORABLE UNITED STATES DISTRICT COURT WITHIN AND FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION:

On motion of defendant, William C. Percy, Jr., upon suggesting to the Court that additional time is needed within which to file pleadings herein:

IT IS ORDERED that said defendant be granted an additional thirty (30) days within which to plead herein.

Baton Rouge, Louisiana, this 10th day of October, 1963.

(SIGNED) E. GORDON WEST
JUDGE

By Attorneys:

D'AMICO & CURET

By
Sam J. D'Amico
610 Raymond Building

Judges for said court may be made.

BENJAMIN E. SMITH
ATTORNEY AND COUNSELOR AT LAW
SUITE 406 CIVIC CENTER BLDG.
LOYOLA AVENUE
JACKSON 4362
NEW ORLEANS 12, LA.

FIRST DRAFT

CORE
PLAQUEMINE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

CONGRESS OF RACIAL EQUALITY, JAMES FARMER, DR. BERTRAND TYSON, REV. JETSON W. ~~CURTIS~~ DAVIS W. W. HARLEAUX, RUDOLPH LUMBARD, CAPT. TALBERT HARRIS, PLAINTIFFS	CIVIL ACTION NO. **APPLICATION FOR CONVENING OF THREE JUDGE DISTRICT COURT**
AGAINST	
HON. JAMES H. ~~CURTIS~~ DAVIS INDIVIDUALLY AND AS GOVERNOR OF THE STATE OF LOUISIANA; JACK T. S. GREMILLION, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF LOUISIANA; C. A. GRIFFON, JR., SHERIFF OF THE PARISH OF IBERVILLE, LOUISIANA; DENNIS SONGY, CHIEF OF THE POLICE DEPARTMENT OF THE TOWN OF PLAQUEMINE, LOUISIANA; CHARLES P. SCHNEBELEN, MAYOR OF THE MUNICIPAL CORPORATION DESIGNATED AS THE TOWN OF PLAQUEMINE, LOUISIANA; EDWARD T. SUPPLE, PRESIDENT OF THE IBERVILLE PARISH POLICE JURY THE GOVERNING AUTHORITY OF SAID PARISH IN THE STATE OF LOUISIANA; AND SAMUEL T. CASHIO, DISTRICT ATTORNEY OF THE EIGHTEENTH JUDICIAL DISTRICT OF LOUISIANA, DEFENDANTS	page 6 - "V"

Plaintiffs, upon their complaint heretofore filed, hereby make application for the hearing of this cause and of plaintiffs' motion for an interlocutory injunction herein before a district court of three judges as required by Title 28, United States Code, Section 2281, and respectfully requests that the Chief judge of the United States Court of Appeals for the Fifth Circuit be notified pursuant to Section 2284 of Title 28, United States Code, of the presentation of plaintiffs' application for injunctive relief in order that the necessary designation of

Judges for said court may be made.

BENJAMIN E. SMITH
ATTORNEY AND COUNSELOR AT LAW
SUITE 406 CIVIC CENTER BLDG.
234 LOYOLA AVENUE
JACKS -4362
NEW ORL S 12, LA.

COLLINS, DOUGLAS & ELIE
Attorneys for Plaintiffs
2211 Dryades Street
New Orleans, Louisiana

By______________________________
A Partner

OF COUNSEL:

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Baton Rouge, Louisiana

Carl Rachlin
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New York, New York

Floyd B. McKissick
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Durham, North Carolina

Beverly Axlerod
345 Franklin Street
San Francisco, California

FIRST DRAFT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

CONGRESS OF RACIAL EQUALITY,
JAMES FARMER,
DR. BERTRAND TYSON,
REV. JETSON W. DAVIS
W. W. HARLEAUX,
RUDOLPH LOMBARD,
CAPT. TALBERT HARRIS,
PLAINTIFFS

AGAINST

HON. JAMES H. DAVIS INDIVIDUALLY AND AS GOVERNOR OF THE STATE OF LOUISIANA; JACK P. F. GREMILLION, INDIVIDUALLY AND AS ATTORNEY GENERAL OF THE STATE OF LOUISIANA; C. A. GRIFFON, JR., SHERIFF OF THE PARISH OF IBERVILLE, LOUISIANA; DENNIS SONGY, CHIEF OF THE POLICE DEPARTMENT OF THE TOWN OF PLAQUEMINE, LOUISIANA; CHARLES P. SCHNEBELEN, MAYOR OF THE MUNICIPAL CORPORATION DESIGNATED AS THE TOWN OF PLAQUEMINE, LOUISIANA; EDWARD T. SUPPLE, PRESIDENT OF THE IBERVILLE PARISH POLICE JURY THE GOVERNING AUTHORITY OF SAID PARISH IN THE STATE OF LOUISIANA; AND SAMUEL T. CASHIO DISTRICT ATTORNEY OF THE EIGHTEENTH JUDICIAL DISTRICT OF LOUISIANA,
DEFENDANTS

CIVIL ACTION

NO.

MOTION FOR TEMPORARY RESTRAINING ORDER and PRELIMINARY INJUNCTION

: : : : : : : : : : : : : : : : :

~~September~~ 1963, Upon the complaint herein, verified, and on the grounds therein set forth, plaintiffs move this court as follows; Pursuant to the various provisions of Rule 65 of the Federal Rule of Civil Procedure:

1. To issue a Temporary Restraining Order, restraining the defendants, their agents, servants and employees, and all persons acting in concert or participating with any one or more of them, from the enforcement, operation or execution of Louisiana Statutes L.S.A.-R.S. 14:63.4, 14:100.1 14:103, 14:103.1, pending the hearing before a District Court of three Judges, upon the issuance of the preliminary injunction sought hereinafter in this motion and the

determination thereof;

2. To convene a District Court of three judges, as required by and in accordance with the provisions of Title 28, United States Code, Sections 2281 and 2284, and the accompanying application filed therefor; and

3. That such District Court of three Judges issue an interlocutory injunction, restraining the defendants, their agents, servants and employees, and all persons acting in concert or participating with any one or more of them, from the enforcement, operation or execution of Louisiana Statutes, L.S.A.-R.S. 14:63.4, 14:100.1, 14:103, 14:103.1, pending the final hearing and determination thereof.

COLLINS, DOUGLAS & ELIE
ATTORNEYS FOR PLAINTIFFS
2211 Dryades Street
New Orleans 13, Louisiana

BY: ____________________
A Partner

OF COUNSEL:

Marvin M. Karpatkin
660 Madison Avenue
New York 19, New York

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971 South 13th Street
Baton Rouge, Louisiana

Carl Rachlin
280 Broadway
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213½ West Main Street
Durham, North Carolina

Beverly Axlerod
345 Franklin Street
San Francisco, California

FIRST DRAFT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

NEW ORLEANS DIVISION

CONGRESS OF RACIAL EQUALITY,
JAMES FARMER,
DR. BERTRAND TYSON,
REV. JETSON W. ~~CURTIS~~ DAVIS
W. W. HARLEAUX,
RUDOLPH LUMBARD,
CAPT. TALBERT HARRIS,
PLAINTIFFS

AGAINST

HON. ~~JAMES~~ JIMMIE H. ~~CURTIS~~ DAVIS,
INDIVIDUALLY AND AS GOVERNOR
OF THE STATE OF LOUISIANA;
JACK P. F. GREMILLION,
INDIVIDUALLY AND AS ATTORNEY
GENERAL OF THE STATE OF
LOUISIANA;
C. A. GRIFFON, JR., SHERIFF
OF THE PARISH OF IBERVILLE,
LOUISIANA; DENNIS SONGY, CHIEF
OF THE POLICE DEPARTMENT OF THE
TOWN OF PLAQUEMINE, LOUISIANA;
CHARLES P. SCHNEBELEN, MAYOR OF
THE MUNICIPAL CORPORATION
DESIGNATED AS THE TOWN OF
PLAQUEMINE, LOUISIANA; EDWARD
T. SUPPLE, PRESIDENT OF THE
IBERVILLE PARISH POLICE JURY
THE GOVERNING AUTHORITY OF SAID
PARISH IN THE STATE OF LOUISIANA;
AND SAMUEL T. CASHIO, DISTRICT
ATTORNEY OF THE EIGHTEENTH
JUDICIAL DISTRICT OF LOUISIANA,
DEFENDANTS

COMPLAINT

CLASS ACTION

: : : : : : : : : : : :

I.

Jurisdiction is conferred upon this court pursuant to the following provisions of the United States Code:

(a) The jurisdiction of this court is invoked under Section 2281 of Title 28 of the United States Code inasmuch as this is an action seeking an interlocutory and a permanent injunction restraining the enforcement, operation, and execution of certain statutes of the State of Louisiana upon the grounds of the unconstitutionality of such statutes. The statutes whose enforcement this action seeks to enjoin upon the grounds of their unconstitutionality are the following sections of Title 14 of Louisiana Statutes Annotated, Revised: LSA-R.S. 14:63.4; LSA-R.S. 14:100.1; LSA-R.S. 14:103; LSA-R.S. 14:103.1. Plaintiffs contend that these statutes all of which were enacted as emergency legislation by the Louisiana State Legislature in its 1960 Session and made effective June 22, 1960, violate their rights under the Constitution of the United States, specifically the rights of freedom of speech, ~~and~~ expression, ASSEMBLY AND PETITION under the first amendment and their rights under the Equal Protection ~~Clause~~ and the ~~Due Process~~ PRIVILEGES AND IMMUNITIES Clauses of the Fourteenth Amendment of the Constitution of the United States.

[illegible]

(b) The jurisdiction of this court is likewise invoked under Section 1343(3) of Title 28 of the United States Code inasmuch as this is an action authorized by Title 42, United States Code, Section 1933, which may be commenced by any person to redress the deprivation, under color of any state law, any right, privilege, or immunity secured by the Consitution of the United States providing for equal rights ~~as~~ of citizens ~~or~~ AND of all persons within the jurisdiction of the United States.

II.

The Plaintiffs are as follows:

(b) ~~(a)~~ The Plaintiff ~~John~~ JAMES Farmer is a resident AND CITIZEN of the State of New YORK, He is The ~~and~~ National Director, AND, AS such, ~~and~~ Chief Executive Officer of the Plaintiff Congress of Racial Equality.

(A) ~~(b)~~ The Plaintiff Congress of Racial Equality (hereinafter called CORE) is a NON-PROFIT membership Corporation organized and existing under the Laws of the State of New York,

and domiciled in

whose corporate purposes include the PROMOTION securing and furthering of complete racial equality in the United States.

(c) The Plaintiff Rudolph Lumbard is a resident of the City of New Orleans, Orleans Parish, A CITIZEN OF THE STATE OF LOUISIANA and a National Vice President of CORE. and domicile

(d) The Plaintiff Dr. Bertrand Tyson is a resident of the Town of Plaquemine, Iberville Parish, AND A CITIZEN OF and THE STATE OF LOUISIANA.

(e) The Plaintiff W. W. Harleaux is a resident of the Town of Plaquemine, Iberville Parish, AND A CITIZEN [illegible] OF THE STATE OF LOUISIANA.

(f) The Plaintiff Rev. Jetson W. Davis is a resident of the Town of Plaquemine, Iberville Parish, AND A CITIZEN OF THE STATE OF LOUISIANA.

(g) The Plaintiff Capt. Talbert Harris is a retired officer of the United States Army and a resident of the Town of Plaquemine, Iberville Parish, AND A CITIZEN OF THE STATE OF LOUISIANA.

III.

upon info & belief ~~at all times relevant herein~~ The Defendants are as follows:

(a) The Defendants ~~James~~ Jimmie H. Davis and Jack P. F. Gremillion are, and at all relevant times herein were, respectively, the Governor of the State of Louisiana and the Attorney General of the State of Louisiana and they and their respective successors in office, whomever they may be during the pendency of this litigation, are named as defendants, individually, and in their official capacities, the Governor as the Chief Executive of the State of Louisiana, and the Attorney General as the Chief Law Enforcement Officer of the State of Louisiana. ~~On information and belief both of such defendants maintain residencies in the City of New Orleans, Orleans Parish, and, without limitation of the foregoing the~~ The Defendant Jack P. F. Gremillion maintains an official state office for the transaction of state business, and for the receipt and acceptance of legal process in the City of New

Orleans, Orleans Parish.

(b) The Defendant C. A. Griffon, Jr. (hereinafter "Griffon") is a resident of the Town of Plaquemine, Iberville Parish and at all relevant times was the Sheriff of such Iberville Parish.

(c) The Defendant Dennis Songy (hereinafter "Songy") is a resident of the Town of Plaquemine, Iberville Parish, and at all relevant times was the Chief of the Police Department of such Town, ~~and parish.~~

(d) The Defendant Charles P. Schnebelen (hereinafter "Schnebelen") is a resident of the Town of Plaquemine, Iberville Parish, and and at etc the Mayor of the Municipal Corporation designated as the Town of Plaquemine.

(e) The Defendant Edward T. Supple (hereinafter "Supple") is a resident of the Town of Plaquemine, Iberville Parish, ~~and~~ at etc and President of the Iberville Parish Police Jury, the governing authority of said Iberville Parish.

(f) The Defendant Samuel T. Cashio (hereinafter "Cashio") is a resident of Maringouin, Iberville Parish, Louisiana, at etc and the District Attorney of the Eighteenth Judicial District of Louisiana, such judicial district including therein Iberville Parish.

(G) On information and belief, ALL of such Defendants Griffon, Songy, Schnebelen, Supple, and Cashio constitute as a group, ~~all or~~ a substantial part of the executive and law enforcement authorities governing the execution and enforcement of the laws of the State of Louisiana in the Town of Plaquemine and in Iberville Parish. The Defendants Griffon, Songy, Schnebelen, and Supple are further identified as being the plaintiffs in a certain legal action brought against various of the plaintiffs herein, presently pending in the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, bearing the title "C. A.

Griffon, Jr., Dennis Songy, Charles P. Schnebelen, and Edward T. Supple, Plaintiffs against Congress of Racial Equality, John Doe and Mary Doe, Defendants, Civil Action, Miscellaneous File No. 690." On information and belief the Defendant Cashio in his official capacity as District Attorney for the Eighteenth Judicial District of Louisiana was and is the principal attorney and legal adviser to the Defendants Griffon, Songy, Schnebelen, and Supple in such legal action. The Complaint therein was filed on August 21, 1963. Such complaint seeks a permanent injunction against the Defendants therein, Plaintiffs herein from, inter alia, "financing, sponsoring, encouraging, or engaging in meetings, demonstrations or other activities..." conducted on the "publicways, streets, sidewalks, or highways of the City of Plaquemine of Parish of Iberville, Louisiana...". Simultaneous with such complaint AND subsequent thereto these Defendants, the Plaintiffs therein applied for and obtained from Honorable E. Gordon West, United States District Judge for the Eastern District of Louisiana, Baton Rouge Division, temporary restraining orders, ex parte and without ~~erring~~ HEARING which have effectively prevented the plaintiffs from conducting meetings and other lawful, peaceful, non-violent and constitutionally protected activity. As will be set forth in more detail hereafter, these Defendants have accomplished ~~this~~ Their objective of denying to Plaintiffs their constitutional rights by invoking, and ~~foreing~~ ENFORCING and utilizing certain Louisiana statutes which are in violation of the Constitution of the United States.

IV.

This is a class action brought by Plaintiffs suing on behalf of themselves and others similarly situated, pursuant to Rule 23 (a)(3) of the Federal Rules of Civil Procedure. The rights involved are common and of general interest to the members of the class, represented by the Plaintiffs, namely, thousands of Negro and White citizens of the United States and residents and citizens of the State of Louisiana in various parishes including Iberville Parish and in various cities and towns including the Town of Plaquemine, who have been effectively denied their constitutional rights of freedom of speech, freedom of assembly, and freedom of petition. Members of this class are so numerous as to make it impracticable to name them all as plaintiffs herein and to bring them all before this court.

V.

This is a proceeding for a declaratory judgement under Title 28, United States Code, Sections 2201 and 2202, and Rule 57, Federal Rules of Civil Procedure, for the purpose of determining and declaring the rights and legal relations of the parties to the matter in controversy, i.e., whether the enactment and enforcement of Louisiana Statutes LSA-R.S. 14:63.4, 14:100.1, 14:103, and 14:103.1 are in violation of the first and fourteenth Amendments of the Constitution of the United States.

All of these statutes were enacted by the 1960 Emergency Session of the Louisiana State Legislature, and became effective on June 22, 1960. The statutes are as follows:

"63.4 Aiding and abetting others to enter or remain on premises where forbidden.

A. No person shall incite, solicit, urge, encourage, exhort, instigate or procure any other person to go into or upon or to remain in or upon any structure, water craft or any other movable which belongs to another, including public buildings and structures, ferries and bridges, or any part, portion or area thereof, knowing that such other person has been forbidden to go or remain there, either orally or in writing, including by means of any sign hereinafter described, by the owner, lessee or custodian of the property or by any other authorized person.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.

For the purposes of this Section, the above mentioned sign means a sign or signs posted on or in the structure, water craft or any other movable, including public buildings and structures, ferries and bridges, or part, portion or area thereof, at a place or places where such sign or signs may be reasonably expected to be seen.

B. Any law enforcement officer investigating a complaint that the provisions of this Section are being or have been violated or any such officer making any arrest for violation of the provisions of this Section, is hereby vested with authority to require any person involved in such investigation or arrest to identify himself to such officer. Upon demand of such officer, the person involved shall inform the officer of his true name and address.

C. Whoever violates the provisions of Sub-section A or Sub-section B above, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned in the parish jail for not more than six months, or be both fined and imprisoned. Added Acts 1960, No. 79, Para. 1."

"100.1 Obstructing public passages.

No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.

Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both fined and imprisoned.

This section shall not be applicable to the erection or construction of any barricades or other forms of obstructions as a safety measure in connection with construction, excavation, maintenance, repair, replacement or other work, in or adjacent to any public sidewalk, street, highway, bridge, alley, road, or other passageway, nor to the placing of barricades or other forms of obstruction by governmental authorities, or any officer or agent thereof, in the proper performance of duties. Added Acts 1960, No. 80, Para. 1."

"103. Disturbing the peace.

A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:
(1) Engaging in a fistic encounter; or
(2) Using of any unnecessarily loud, offensive, or insulting language; or
(3) Appearing in an intoxicated condition; or
(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or
(5) Holding of an unlawful assembly; or
(6) Interruption of any lawful assembly of people; or
(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both.

B. Any person or persons, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, while in or on the premises of another, whether that of an individual person, a corporation, a partnership, or any association, and on which property any store, restaurant, drug store, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber shop or beauty parlor, or any other lawful business is operated which engages in selling articles of merchandise or services of accommodation to members of the public, or engages generally in business transactions with members of the public, who shall:

(1) prevent or seek to prevent, or interfere or seek to interfere with the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service or accommodation, or selling to or showing merchandise to, or otherwise pursuing his lawful occupation or business with customers or prospective customers or other members of the public who may then be in such building, or

(2) prevent or seek to prevent, or interfere or seek to interfere with other persons who are expressly or impliedly invited upon said premises, or with prospective customers coming into or frequenting such premises in the normal course of the operation of the business conducted and carried on upon said premises, shall be guilty of disorderly conduct and disturbing the peace, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the parish jail for not more than six months; or by both such fine and imprisonment. As amended Acts 1960, No. 70, Para. 1."

"103.1 Disturbing the peace.

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, in or upon a shore protection structure or structures, or a public street or public highway, or upon a public

> sidewalk, or any other public place or building, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or parish, in which such act or acts are committed, or by any law enforcement officer of the state of Louisiana, or any other authorized person, or
>
> (2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or
>
> (3) While in or on any public bus, taxicab, boat, ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) supra, to, toward, or in the presence of any other passenger on said vehicle or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or
>
> (4) refuses to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof, shall be guilty of disturbing the peace.
>
> B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, Para. 1."

VI.

During the spring and summer months of 1963 the Plaintiffs and others had been engaged, and continues to be engaged, in the Town of Plaquemine, Iberville Parish, and elsewhere, in various lawful, peaceful and constitutionally SANCTIONED activities seeking to obtain for the Negro citizens of the Town of Plaquemine, Iberville Parish, certain rights and privileges to which they are entitled under the Constitution of the United States. These included, among other things, a voter registration campaign to educate, persuade, and assist Negro citizens to register so that they might be eligible to exercise the right of franchise in federal and state elections; attempts to secure the ending of the unconstitutional and illegal practices of racial segregation in court house facilities and other public buildings; attempts to improve the employment opportunities of Negro citizens and to eliminate discriminatory bars to their achieving such public employment as they might be qualified for; attempts to commence the process of ending total racial segregation in the public school system, which has continued in Plaquemine notwithstanding its clear unconstitutionality. Among other things, for the purpose of peacefully and harmoniously achieving these constitutional goals, Plaintiffs sought to persuade Defendants of the wisdom and practicability of organizing a bi-racial committee for the purpose of providing a responsible method of communication between the Negro citizenry and the public authorities. In their attempts to achieve all of these lawful and constitutionally entitled objectives, Plaintiffs engaged from time to time in various public and private meetings, indoors and outdoors, and likewise in peaceful picketing and demonstrations for the purpose of persuading the authorities and public opinion of the legitimacy and wisdom of ~~the~~ Their goals.

The Plaintiff CORE has engaged in such activities elsewhere in the State of Louisiana some of the results of which have been, in certain cities and parishes in the State, the recognition of the lawfullness and justice of the desired goals, the establishment of bi-racial committees, AND MEANS OF COMMUNICATION including ~~most notably in~~ the ~~City~~ CITIES of New Orleans, AND BATON ROUGE, and just recently in the City of Hammond, all to the general purpose and effect of promoting the full exercise of constitutional rights by all citizens of the State of Louisiana, Negro and White.

Contrary to the trend indicated ~~elsewhere~~, the Defendants, in their capacity as the governing public officials of the ~~City~~ TOWN of Plaquemine and the Parish of Iberville refused to ~~meet~~ NEGOTIATE with plaintiffs or to TAKE ANY ACTION IN CONNECTION ~~discuss~~ with Plaintiffs ~~in any way~~ proposals for the realization of their legitimate goals. These Defendants chose instead to prosecute Plaintiffs and seek to bar them from engaging in their peaceful activities via the enforcement against Plaintiffs of the aforementioned Louisiana statutes which statutes Plaintiffs allege are unconstitutional. These Defendants did apply for and obtain and there is presently in effect injunctive orders which effectively frustrate Plaintiffs from the conduct of their peaceful activities under the penalty of being in contempt of an order of the United Stated District Court for the Eastern District of Louisiana, Baton Rouge, Louisiana. Defendants have likewise threatened to continue to utilize these statutes, seeking the enforcement thereof in state as well as federal courts for the purpose of preventing Plaintiffs from continuing and conducting their peaceful nonviolent activities.

VII.

Plaintiffs allege that the aforementioned statutes are unconstitutional for the following reasons:

(a) These statutes violate Plaintiffs rights to engage in peaceful picketing and conduct other peaceful meetings and demonstrations, which rightsare protected by the first amendment to the United States Constitution. The First Amendment guarantees, among other things, freedom of speech, freedom of assembly, and freedom of petition. The aforementioned statutes clearly seek to restrict these rights by providing that the statute shall not apply "to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly, or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment, and working conditions." This proviso, is in identical language, appears in each of the four statutes quoted above. Plaintiffs contend that the First Amendment to the Constitution of the United States does not permit the right to picket and to demonstrate to be limited only to "a bona fide legitimate labor organization." These statutes clearly seek to deny to citizens of the United States and of the State of Louisiana, including Plaintiffs, rights which are permitted to only the one special class of "bona ~~fied~~ Fide legitimate labor organization." The right to picket and to engage in peaceful demonstrations belongs to all Americans, not just to labor unions. These statutes attempt an unreasonable and unconstitutional classification. They are unconstitutional on their face, and specifically as applied to Plaintiffs.

(b) These Louisiana statutes are likewise in violation of the Fourteenth Amendment of the United States Constitution, and specifically the equal protection clause and the privileges and immunities clause of such amendment. Plaintiffs will establish at the trial of this matter before the Three-Judge Court that these statutes were enacted for the purpose of seeking to deprive Negro citizens of their rights to equal protection and to the privileges and immunities ~~to~~ of the Citizens of the United States. Although the word "race" or the word "integration" does not appear in these statutes, it is evident that they were enacted with the purpose of preventing meetings, parades, and demonstrations seeking the amelioration of racial segregation, and were never intended to apply to any other situation. As such theyclearly violate the Fourteenth Amendment.

VIII.

Plaintiffs respectfully contend and urge this court that these are not only constitutional questions, but questions of substantial public importance warranting the convening of the Three-Judge Court and the determination of the constitutionality of these statutes by such a court. If Defendants are successful in their efforts to apply these statutes, and thus far they have been successful in the Town of Plaquemine in the Parish of Iberville, there is a clear and present danger that some public officials and law enforcement authorities elsewhere in the State of Louisiana may likewise attempt to apply these unconstitutional statutes in such a manner so as to deprive Plaintiffs and others similarly situated of their First and Fourteenth Amendment rights, and thereby seek to frustrate the progress of the people of this state towards the ultimate securingof the constitutional rights of all of its citizens.

IX.

By reason of the statutes aforesaid, and specifically the enforcement of the aforementioned unconstitutional Louisiana statutes Plaintiffs have suffered irreparable injury, are suffering at present and are threatened with irreparable injury in the future. They have no plain, adequate, or complete remedy to redress these wrongs other than by this suit for an injunction. ~~No~~ ANY other remedy would be ~~attempted~~ ATTENDED by such inequities and ~~demise~~ DELAY as to deny substantive relief and cause further irreparable injury, damage and inconvenience.

WHEREFORE, Plaintiffs pray that this court grant them the following relief:

1. That the court convene ~~at~~ A District Court of Three Judges as provided by Title 28 United States Code, Section 2284.

2. That the court advance this complaint on its docket and order an expeditious hearing according to Law, and that upon such hearing, the court enter an interlocutory injunction to enjoin and restrain the Defendants and each of them, their agents, servants, employees, and attorneys, and all persons in active concert or participation with any of them from the enforcement, operation, or execution of the Louisiana Statutes LSA-R. S. 14:63.4, 14:100.1, 14:103, and 14:103.1, on the grounds that such statutes are null and void and in violation of the First and Fourteenth Amendments of the United States Constitution.

3. That the Court, upon a final hearing of this cause:

(a) Enter a Final Judgement and Decree that will declare and define the legal rights of the parties in relation to the subject matter of the controversy; and

(b) Enter a Final Judgement and Decree that will declare that Louisiana Statutes LSA-R. S. 14:63.4, 14:100.1, 14:103, and 14:103.1 are unconstitutional and therefore null and void;

(c) Enter a Final Judgment and Decree enjoining the Defendants, their agents, servants, employees, and attorneys and all persons in active concert or participation with them from the enforcement, operation, or exercise of the aforesaid statutes, either by criminal prosecution in state court, or by injunction proceedings in state or in federal courts or in any other manner.

4. That the Plaintiffs be awarded costs and attorney's fees together with such other and further relief as may appear just and proper.

COLLINS, DOUGLAS & ELIE
Attorneys for Plaintiffs
2211 Dryades Street
New Orleans, Louisiana
Murphy W. Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana
By________________________
~~A Partner~~

OF COUNSEL:

Marvin M. Karpatkin, Esq.
660 Madison Avenue
New York ~~19~~ 21, New York

~~Murphy W. Bell, Esq.~~
~~971 South 13th Street~~
~~Baton Rouge, Louisiana~~

Carl Rachlin, Esq.
280 Broadway
New York, New York

Floyd B. McKissick, Esq.
213-1/2 West Main Street
Durham, North Carolina

Beverly Axlerod, Esq.
345 Franklin Street
San Francisco, California

Leo Pfeffer, Esq.
15 East 84th Street
New York 28, New York

STATE OF LOUISIANA

PARISH OF ORLEANS

Before me the undersigned authority personally came and appeared ____, ________________________________, ______________________ ____________, ________________________ who, being duly sworn, deposed and said that they are the Plaintiffs in the foregoing complaint; that they have read the same and all of the allegations of fact contained therefore are true and correct except as to the matters therein alleged upon information and belief and as to those matters they believe then to be true.

____

____

____

____

Sworn to and subscribed to
before me this ______________ day of
______________________, 1963.

____
Notary Public

CORE
Plaquemine

RECEIVED

OCT 28 1963

LADECK & ELIAS

TOWN OF CLINTON, ET AL | NUMBER: A - 6 5 3 9

20TH JUDICIAL DISTRICT COURT

VS.

PARISH OF EAST FELICIANA

CONGRESS OF RACIAL EQUALITY, ET AL | STATE OF LOUISIANA

TO: Carl Rachlin, Attorney
280 Broadway
New York, N. Y.

NOTICE IS HEREBY GIVEN that the temporary restraining order issued herein on September 13, 1963 is extended for an additional period of ten (10) days until 11:45 o'clock a.m., November 3, 1963, unless sooner dissolved by this Court.

NOTICE IS FURTHER GIVEN that the application for preliminary injunction herein is continued until and is reassigned for hearing on Monday, November 4, 1963, at 10:00 o'clock a.m.

NOTICE IS FURTHER GIVEN that all witnesses sequestered on the motion of either of the parties litigant on October 14, 1963, remain under the rule until the termination of the hearing on the application for preliminary injunction, or until the further order of this Court.

WITNESS the Honorable Judge of said Court, this 24th day of October, A.D., 1963.

Ina M. Durham
CLERK OF COURT

CORE Plaquemine

State of Louisiana
DEPARTMENT OF JUSTICE
Baton Rouge

JACK P. F. GREMILLION
ATTORNEY GENERAL

RECEIVED
OCT 28 1963
VLADECK & ELIAS

OCTOBER 23, 1963

MR. CARL RACHLIN, ESQ.
280 BROADWAY
NEW YORK, NEW YORK

RE: REV. JOSEPH CARTER V. WILLIAM C. PERCY, JR., INDIVIDUALLY AND AS THE SHERIFF OF THE PARISH OF WEST FELICIANA, LOUISIANA, AND

FLETCHER HARVEY, INDIVIDUALLY AND AS REGISTRAR OF VOTERS OF THE PARISH OF WEST FELICIANA, LOUISIANA, JOHN DOE AND HENRY DOE.

DEAR SIR:

ENCLOSED HEREWITH IS A MOTION TO DISMISS, TOGETHER WITH PROPER NOTICE OF MOTION, ON THE ABOVE STYLED MATTER, WHICH HAS BEEN FILED OF RECORD THIS DAY.

YOURS VERY TRULY,

T. W. McFerrin

THOMAS W. McFERRIN
SPECIAL COUNSEL

TWMcF/jc
ENCL -
CC: MR. FLOYD B. McKISSICK, ESQ.
213½ WEST MAIN ST.
DURHAM, NORTH CAROLINA

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

REV. JOSEPH CARTER :

VS. :

WILLIAM C. PERCY, JR., :
INDIVIDUALLY AND AS THE
SHERIFF OF THE PARISH OF :
WEST FELICIANA, LOUISIANA

:

AND

:

FLETCHER HARVEY,
INDIVIDUALLY AND AS THE :
REGISTRAR OF VOTERS OF THE
PARISH OF WEST FELICIANA, :
LOUISIANA, JOHN DOE AND
HENRY DOE :

NUMBER 2854

CIVIL ACTION

COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS

NOTICE OF MOTION:

TO: MURPHY W. BELL
ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
CARL RACHLIN
FLOYD B. MCKISSICK
ATTORNEYS FOR COMPLAINANT

PLEASE TAKE NOTICE, THAT THE UNDERSIGNED WILL BRING THE MOTION TO DISMISS IN THIS CASE, PREVIOUSLY FILED WITH THE COURT ON OCTOBER 23, 1963, A COPY OF WHICH IS ATTACHED HERETO, BEFORE THE FEDERAL DISTRICT COURT, POST OFFICE BUILDING, 709 FLORIDA STREET, BATON ROUGE, LOUISIANA, ON THE 1ST DAY OF NOVEMBER, 1963, AT 10 O'CLOCK IN THE FORENOON OF THAT DAY OR AS SOON THEREAFTER AS COUNSEL CAN BE HEARD.

JACK P. F. GREMILLION
ATTORNEY GENERAL
STATE OF LOUISIANA

THOMAS W. MC FERRIN
SPECIAL COUNSEL

HARRY J. KRON
ASSISTANT ATTORNEY GENERAL
STATE OF LOUISIANA

FRANK L. DOBSON
SPECIAL COUNSEL
ATTORNEY GENERAL'S OFFICE

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

REV. JOSEPH CARTER	
vs.	
WILLIAM C. PERCY, JR. INDIVIDUALLY AND AS THE SHERIFF OF THE PARISH OF WEST FELICIANA, LOUISIANA	NUMBER 2854
AND	CIVIL ACTION
FLETCHER HARVEY, INDIVIDUALLY AND AS THE REGISTRAR OF VOTERS OF THE PARISH OF WEST FELICIANA, LOUISIANA, JOHN DOE AND HENRY DOE	COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

TO THE HONORABLE THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA, BATON ROUGE DIVISION:

MOTION TO DISMISS

NOW INTO COURT COMES FLETCHER HARVEY, INDIVIDUALLY AND AS REGISTRAR OF VOTERS FOR THE PARISH OF WEST FELICIANA, STATE OF LOUISIANA, THROUGH JACK P. F. GREMILLION, ATTORNEY GENERAL OF THE STATE OF LOUISIANA, AND OTHER UNDERSIGNED COUNSEL, AND APPEARING HEREIN SOLELY FOR THE PURPOSE OF THIS MOTION, WITH RESPECT REPRESENTS:

1.

THAT COMPLAINANT HEREIN, JOSEPH CARTER, FILED THIS ACTION ON SEPTEMBER 23, 1963, ALLEGING THAT MR. FLETCHER HARVEY, INDIVIDUALLY AND AS REGISTRAR OF VOTERS OF THE PARISH OF WEST FELICIANA, CAUSED DAMAGE TO COMPLAINANT HEREIN, BY REFUSING TO PERMIT HIM TO REGISTER TO VOTE ON AUGUST 10, 1963.

2.

That for the purposes of this Motion, and for that purpose only, defendant Fletcher Harvey, admits the allegations of complainant's petition filed herein.

3.

That the complainant herein, Joseph Carter, became a registered voter of the Parish of West Feliciana on October 17, 1963, as is more fully shown by the sworn affidavit of Fletcher F. Harvey, together with the evidence of registration of Joseph Carter, all of which is attached hereto and made a part hereof.

4.

Defendant, Fletcher Harvey, shows that no type or form of election, at which the registered voters of the Parish of West Feliciana have been called upon to cast any type of ballot, has occurred during the period August 10. 1963, through October 17, 1963.

5.

That due to the above, any controversy existing between defendant Fletcher Harvey and complainant Joseph Carter, has now abated, and that any action taken by defendant Fletcher Harvey against the complainant Joseph Carter, as alleged in said complaint, caused no damage whatsoever to complainant herein, as Joseph Carter is presently a registered voter of the Parish of West Feliciana, and was not denied any privilege of voting during the period August 10, 1963 through October 17, 1963.

WHEREFORE, defendant, Fletcher Harvey, individually and as Registrar of Voters for the Parish of West Feliciana, prays that this Motion to Dismiss be granted, and that petitioner's complaint be dismissed as to said defendant.

APPEARER FURTHER PRAYS FOR ALL ORDERS NECESSARY AND FOR ALL GENERAL AND EQUITABLE RELIEF.

JACK P. F. GREMILLION
ATTORNEY GENERAL
STATE OF LOUISIANA

THOMAS W. MC FERRIN
SPECIAL COUNSEL

HARRY J. KRON
ASSISTANT ATTORNEY GENERAL
STATE OF LOUISIANA

FRANK L. DOBSON
SPECIAL COUNSEL

CERTIFICATE

I HEREBY CERTIFY THAT A COPY OF THE FOREGOING MOTION TO DISMISS HAS BEEN SERVED UPON THE COMPLAINANT, JOSEPH CARTER, THROUGH HIS ATTORNEY OF RECORD, MURPHY W. BELL, WHOSE ADDRESS IS 971 SOUTH 13TH STREET, BATON ROUGE, LOUISIANA, BY UNITED STATES MAIL, POSTAGE PREPAID.

BATON ROUGE, LOUISIANA, OCTOBER ________, 1963.

THOMAS W. MCFERRIN
SPECIAL COUNSEL

Copy Received
By Mail 10/14/63
VLADECK & ELIAS
Attorneys for CORE

EIGHTEENTH JUDICIAL DISTRICT COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

TOWN OF PLAQUEMINE and PARISH OF IBERVILLE, LOUISIANA	NUMBER 10149 DIVISION A
VS.	ORDER DENYING MOTION FOR DISSOLUTION OF TEMPORARY RESTRAINING ORDER AND GRANTING PRELIMINARY INJUNCTION
CONGRESS OF RACIAL EQUALITY, ET ALS	

This cause came on for hearing pursuant to previous assignment, upon the motion of defendants to dissolve the Temporary Restraining Order heretofore issued herein, and upon the petition of plaintiffs for the issuance of a preliminary injunction, the Court having considered the verified pleadings, the evidence adduced and the arguments and briefs of respective counsel, being of the opinion that the acts and agitation on the part of defendants and others acting in concert with them have created situations in which large numbers of individuals and citizens have congregated on and used the public streets and ways of the Town of Plaquemine, Louisiana, contrary to the laws of the State of Louisiana and ordinances of the Town of Plaquemine, Louisiana, all designed to provoke incidents of violence and breaches of the peace, so as to present a clear and present danger to the peace and tranquility of the community, and so as to be injurious to property interests and constitute a public nuisance; and the Court being of the further opinion that irreparable injury, loss or damage will result to the applicants for a preliminary injunction unless such preliminary injunction is issued herein, and that the said applicants have no adequate remedy at law:

IT IS ORDERED, ADJUDGED AND DECREED that the Motion filed by defendants to dissolve the Temporary Restraining Order heretofore issued by this Court be, and the same is hereby rejected and denied, at the costs of defendants.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the rule nisi heretofore issued herein directed to the defendants ordering them to show cause why a preliminary injunction should not issue herein, be, and the same is hereby made absolute and, accordingly:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants, Congress of Racial Equality, W. W. Harleaux, Jetson Davis, Tolbert Harris, Dr. Bertrand O. Tyson, Spiver Gordon, Ronnie Moore, and James Williams, and each of them, and each of their officers, agents, employees and counsel, and all persons in active concert or participation with them, who receive actual knowledge of this Order by personal service or otherwise be, and they are hereby enjoined from financing, sponsoring, encouraging, or engaging in meetings or any other activities whereby violations of existing state, municipal, or parochial laws or ordinances are suggested, advocated or encouraged; from financing, sponsoring, encouraging, or engaging in meetings, demonstrations, or other activities whereby the public ways, streets, sidewalks or highways of the Town of Plaquemine, or the Parish of Iberville, Louisiana, are blocked, or the unimpaired use thereof is denied to other traffic; from financing, sponsoring, encouraging, or engaging in meetings or any other activities wherein or whereby disobedience to the lawful orders of properly constituted law enforcing agencies and their personnel is advocated, suggested, or encouraged; from financing, sponsoring, encouraging, or engaging in meetings or any other activity designed or held for the purpose of impeding or obstructing the administration of justice or the orderly functions of Government; and from financing, sponsoring, or encouraging, or engaging in any activities designed to, or which do, impede, hinder or obstruct officers of the law or officials of the Parish of Iberville, Louisiana, or the Town of Plaquemine, Louisiana, or the State of Louisiana, from performing and discharging the duties of their respective offices; and from conspiring, or participating in any other act for the purpose of provoking breaches of the peace and from violating or continuing to violate LSA-R. S. 14:59, LSA-R. S. 14:63.4, LSA-R. S. 14:92, LSA-R. S. 14:100.1, LSA-R. S. 14:103, LSA-R. S. 14:103.1, LSA-R. S. 14:108 and the following ordinances of the Town of Plaquemine, Louisiana: Section 11-4 and Sections 11-17 through 11-32, inclusive of the Code of Ordinances of the Town of Plaquemine, Louisiana.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this preliminary injunction shall be effective during the pendency of these proceedings and is issued without bond or other security.

THIS ORDER SIGNED in open Court ~~my office~~ at Plaquemine, Louisiana, this 10 day of October, 1963, at the hour of 9:10 o'clock A. M.

Daniel Kimball
JUDGE, 18TH JUDICIAL DISTRICT COURT
WITHIN AND FOR THE PARISH OF IBERVILLE,
LOUISIANA.

FILED
OCT 10 ~~8~~ 9 13 AM '63
Theresa J. Delacroix
Acting CLERK, EX-OFFICIO RECORDER
IBERVILLE PARISH, LOUISIANA

A TRUE COPY
DATE OCT 11 1963
Mrs. Lois Gautreaux
Deputy Clerk, Ex-officio, Recorder, Iberville Parish, Louisiana

CORE
4149

Plaquemine

TOWN OF CLINTON and PARISH : NUMBER A - 6 5 3 9
OF EAST FELICIANA :
: 20TH JUDICIAL DISTRICT COURT
:
: PARISH OF EAST FELICIANA
CONGRESS OF RACIAL EQUALITY :
ET AL : STATE OF LOUISIANA

RULE NISI

To Ronnie Moore

GREETING:

Pursuant to an order of the Honorable Court aforesaid, granted on the motion of the plaintiffs in the above entitled and numbered cause, duly certified copies of said motion and order being herewith served, you are hereby ruled to show cause in said Court at 9:00 o'clock a.m. on the 14th day of October 1963, why you should not be found and held in contempt of this Court for disobeying the temporary restraining order issued herein on the 13th day of September 1963 and extended by consent of the parties against whom directed on the 30th day of September 1963, and punished by fine and imprisonment as the law directs.

Witness the Honorable John R. Rarick, Judge of our said Court, at Clinton, Louisiana, this 12th day of October 1963.

Inez M. Durham
Inez M. Durham, Clerk of Court,
East Feliciana Parish.

SUBPOENA

You are hereby commanded to appear in the 20TH Judicial District Court, holden in and for the Parish of East Feliciana, on the 14th day of October 1963 at 9:00 a.m., and there continue until discharged by the Court or party by whom you are summoned, to testify to the truth according to your knowledge in a certain controversy pending between the Town of Clinton et al Plaintiffs, and the Congress of Racial Equality et al Defendants, and on the part of the plaintiffs (for Cross Examination) and hereof you are to fail not under penalty of law.

Inez M. Durham
Inez M. Durham, Clerk of Court.

A TRUE AND CORRECT COPY
This 12 day of Oct 1963
Inez M. Durham,
East Feliciana Parish. Clerk of Court
STATE OF LA.

TOWN OF CLINTON and PARISH OF EAST FELICIANA : NUMBER A - 6 5 3 9

vs : 20TH JUDICIAL DISTRICT COURT

: PARISH OF EAST FELICIANA

CONGRESS OF RACIAL EQUALITY ET AL : STATE OF LOUISIANA

- -

MOTION

NOW INTO COURT through their undersigned counsel come the Town of Clinton and the Parish of East Feliciana, plaintiffs herein, and suggest to the Court that The Congress of Racial Equality, the East Feliciana Parish Chapter of the Congress of Racial Equality, Ronnie M. Moore, Edgar Herbert Vickery, William Henry Brown, Josephine Holmes, Corrie C. Collins, Henry Brown, Bernardine Butler, James Bell, Verla Bell, Wilbert Johnson, Jr., Louvenia Flowers, Mack Elsy, Johnny Matthews, Ora Lea Bell, Marshall Flowers, Lora Davis, Major Flowers, Harrold Knox, Mary Lee Harrell, Betty Louise Watson, Jimmy Lea Spears, Charlie Perry, J. C. Sanders, Louise Eunice Scott, Maggie Perkins, and Clyde Adams -

and each of them, have wilfully disobeyed the temporary restraining order issued herein on the 13th day of September 1963 and extended by consent of the parties against whom directed on the 30th day of September 1963, in that they, and each of them, pursuant to a common design and conspiracy, conspired together for the purpose of and did act in such a manner as to annoy, disturb, interfere with or be offensive to others; congregate with others on the public street and sidewalks of the Town of Clinton, and refuse to move on when ordered to do so by police officers: and, become delinquent juveniles or contribute to the delinquency of jeveniles.

Movers further suggest to the Court that the aforesaid acts of the aforementioned organizations and individuals are and constitute a flagrant contempt of the aforesaid orders of this Court; that a rule nisi should issue herein, directed to the aforementioned organizations and individuals, and each of them, and ordering them and each of them to show cause, if any they have or can, at an hour and on a date to be fixed by the Court, why they should not be found and held in contempt of this Court for disobeying the said temporary restraining order, and punished by fine and imprisonment as the law directs.

By Attorneys:

William F. Kline, Jr

WILLIAM F. KLINE, JR.,
Attorney for the Town of
Clinton.

R. G. VAN BUSKIRK,
Special Counsel for the
Parish of East Feliciana.

WILLIAM E. WOODWARD,
Special Counsel for the
Parish of East Feliciana.

Richard H Kilbourne

RICHARD H. KILBOURNE,
District Attorney for the
20th Judicial District.

FILED
This 12 day of Oct 1963
Inez M. Dunha
East Feliciana Parish. Clerk of Court
STATE OF LA.

A TRUE AND CORRECT COPY
This 12 day of Oct 1963
Inez M. Dunha
East Feliciana Parish. Clerk of Court
STATE OF LA.

TOWN OF CLINTON and PARISH OF EAST FELICIANA	:	NUMBER A - 6539
vs	:	20TH JUDICIAL DISTRICT COURT
	:	PARISH OF EAST FELICIANA
CONGRESS OF RACIAL EQUALITY ET AL	:	STATE OF LOUISIANA

ORDER

The above and foregoing motion considered,

LET a rule nisi issue herein directed to the organizations and individuals named therein, and each of them, ordering them, and each of them to show cause, if any they have or can, before this Court at Clinton, Louisiana, at 9:00 o'clock a.m., on the 14th day of October 1963, why they, and each of them, should not be found and held in contempt of this Court for disobeying the temporary restraining order issued herein on the 13th day of September 1963 and extended by consent of the parties against whom directed on the 30th day of September 1963, and punished by fine and imprisonment as the law directs.

Clinton, Louisiana, this 12th day of October 1963.

JUDGE, 20TH JUDICIAL DISTRICT COURT.

FILED

This 12 day of Oct 1963

East Feliciana Parish, Clerk of Court

STATE OF LA.

A TRUE AND CORRECT COPY

This 12 day of Oct 1963

East Feliciana Parish. Clerk of Court

STATE OF LA.

Coll - Plaquemine

October 7, 1963

Nils Douglas, Esq.
Collins, Douglas & Elie
2211 Drayades Street
New Orleans, Louisiana

Dear Nils:

Enclosed is a memo re: § 1985 as applied to voting registration and registrars. I hope it is of help. It was prepared by a very able lawyer, Paul Chevigny, who, I am sure, you will meet very soon.

If there are further memos you wish, please let me know.

Sincerely yours,

CARL RACHLIN

CR:cr
enc.
cc: Paul Chevigny

RECEIVED

OCT -

One Wall Street
New York

ADECK & ELIAS

October 3, 1963

lin, Esq.
way
7, New York

Jurisdiction under 42USCA §1985.

:

The question concerns a lawsuit for
rought by a Negro who attempted to
to vote in West Feliciana Parish, La.
rested by the sheriff, apparently at
gation of the registrar. Counsel are
as to their jurisdiction over the
s under § 1983 of 42USCA, and wish to
her their jurisdiction may be properly
r § 1985. The answer is yes, for the
hat follow.

tus of Registration in Election Law
ana.

It is necessary for jurisdiction under
the above statutes to establish that
ion really is a part of the election
In this connection 18 Louisiana Stats.
l provides that before opening the polls
ral election, the registrar must deliver
registered voters, and no one may vote
on the list (though he may make an
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For our purposes it is important t
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Establishment of Jurisdiction under § 1985.

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As to the first point, it has bee
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registration is a prerequisite to voting, is a denial of equal protection of the laws. Lane v. Wilson, 307 U.S. 268 (1939) (construing an Oklahoma statute which made registration a prerequisite to voting 307 U.S. at 275). Also Davis v. Schnell, 81 F. Supp. 872, 876 (S.D. Ala. 1949) aff'd per curiam 336 U.S. 933 (1949). The Lane case arose under § 1983, but it does stand clearly for the proposition that denial of registration is a denial of equal protection of the laws. As far as equal protection goes, the two sections are not mutually exclusive. Lewis v. Brautigam, 227 F.2d 124, 127-128 (5 Cir. 1955), and jurisdiction may be laid under § 1983 or § 1985.

Whether the right to register is a "privilege and immunity" of a citizen of the United States is unclear, but it is unnecessary to determine this as the equal protection clause is sufficient. Sec. 1985 also requires an overt act in furtherance of the conspiracy, either deprivation of "right or privilege of a citizen of the United States" or injury to "person or property". Fortunately, (and ironically) we avoid having to define the first of these by the arrest in our case, which is at least an injury to the person. cf. Howell v. Gray, 9 F.R.D. 544 (D. Neb. 1949).

Finally we come to the possible immunity of the officer and registrar acting in their official capacity. Several courts have relieved officers of liability on the ground that they were acting in their official capacity. But the Fifth Circuit, at least, has held that even a prosecuting attorney as well as police officers may be liable under §§ 1983

CORE
Plaquemine

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VLADECK & ELIAS

EIGHTEENTH JUDICIAL DISTRICT COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

TOWN OF PLAQUEMINE AND PARISH OF IBERVILLE, LOUISIANA — NUMBER: 10,149

VS.

CONGRESS OF RACIAL EQUALITY, ET ALS — BRIEF

STATEMENT

Defendants filed motions to dissolve the temporary restraining order issued herein by the Honorable District Judge Daniel Kimball on September 19, 1963, and in bar of issuance of the preliminary injunction prayed for by plaintiffs and brought on for hearing on Thursday, September 26, 1963 at 10:00 A.M. at the Parish Courthouse, Plaquemine, Louisiana. The motions were argued and submitted by opposing counsel, and the Honorable Judge gave opposing counsel until October 1, 1963 to file briefs, if desired. Testimony and other evidence was taken in support and in bar of the issuance of the preliminary injunction, the Honorable Judge reserving judgment in the matter until October 10, 1963. The temporary restraining order was extended to that date by agreement of counsel for both sides.

ABSTRACT OF FACTS

On or about August 2, 1963, the Congress of Racial Equality (CORE) began what it termed a voter registration project and made Plaquemine, Louisiana its headquarters for a six-parish area. Simultaneously, a group of Plaquemine Negro leaders, including the the longtime and respected President of the local NAACP charter began petitioning the City Fathers for a redress of longtime local grievances, which included certain flagrantly gerrymandered Negro subdivisions which the Negroes sought to bring within the City limits of the Town of Plaquemine. The Negroes were rebuffed, and thereafter began a series of peaceful and orderly demonstrations which the Negroes testified were intended to dramatize their grievances against the Town Council and Parish Police Jury.

On August 15, 1963, Mr. James Farmer, National Director of CORE, arrived in Plaquemine to address a rally at the Plymouth Rock Baptist Church. After the meeting, the local leaders requested of Mr. Farmer that he join them in a peaceful, orderly march in which they intended to continue to dramatize their dissatisfaction with the way the Town of Plaquemine and the Parish of Iberville handled their petition for redress of grievances.

When the Marchers reached City Hall they assembled peacefully and orderly and softly began to sing the freedom song "We Shall Overcome". Chief of Police Dennis Songy ordered two of the leaders, W. W. Harleaux and Dr. Bertrand Tyson to tell the demonstrators not to sing. They refused. Upon refusal, Songy without attempting to order the crowd to cease singing promptly ordered his men to fire tear gas canisters into the demonstrators in order to "disperse the crowd". Several of the demonstrators were hurt as a result of the police officers tactics, as they fled from the burning, stinging attack of the tear gas.

Thereafter several demonstrations were held to further express the Negroes determination not to be turned back or "around" in spite of Police brutality or other oppressive measures.

On August 21, 1963, Plaintiffs obtained a temporary restraining order enjoining CORE and its officers, agents, servants, employees and attorneys, from "sponsoring, encouraging or financing persons to violate" certain enumerated state criminal statutes and Town ordinances.

STATEMENT OF THE CASE

The issue in this case is the propriety of a Court's use of its injunctive power to prevent people from freely and peacefully associating with one another to determine whether or not racial discrimination is practiced in various public facilities. The record of the District Court hearing is clear; the evidence failed completely to demonstrate that CORE's activities were either designed to foment violence or breaches of the peace (b) or that defendants conduct was the legal cause of what violence did occur.

(a)

Therefore, for this reason and apart from the underlying constitutional questions, defendants take exception to the broad and unsupported findings of fact offered to the court to justify the issuance of the injunction.

Essentially, however, defendants question the constitutionality of using injunctive process to restrain conduct which, except for the violence of third parties, would otherwise be permissible, if not laudable. Here, free speech and peaceful assembly have been suppressed upon a showing of sporadic violence or disorder by others than the free speech participants themselves.

Defendants urge that a court may not, from the fact of violence or disorder alone constitutionally conclude that otherwise peaceful conduct was designed for the purpose of formenting the disorders.

Defendants therefore submit that the Temporary Restraining Order issued by the District Court (a) lacks support in the record, (b) violates the defendants' rights to freedom of speech, association and assembly, protected by the First Amendment, (c) violates CORE's members privileges and immunities as United States citizens, (d) constitutes an unconstitutional prior restraint, (e) fails to meet constitutional standards of specificity, (f) and finally that the injunction unwarrantedly damages the name and good reputation of CORE and its members.

?

I

The injunction violates defendants' rights to freedom of speech, association and assembly in contravention of Constitutional guarantees.

The right of CORE and its members to assist, encourage, associate and assemble with those attempting to obtain a redress of grievances and integrate public facilities is a protected right under the First Amendment to the Constitution. As the Supreme Court stated in De Jonge v. Oregon, 299 U. S. 353 (1937):

> "The question is not as to the auspices under which the meeting is held but as to its purpose; not as to

> the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." (at p. 365)

CORE's activity, for the purpose of promoting peaceful integration is immune from state or federal proscription. The First Amendment, the due process, equal protection and the commerce clauses of the Constitution guarantee freedom in the pursuit of that goal. Boynton v. Virginia, 364 U. S. 450 (1960), Burton v. Wilmington Parking Authority, 365 U. S. 715.

As the Supreme Court stated in N. A. A. C. P. v. Alabama, 357 U. S. 449:

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." (at p. 461)

It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the due process clause of the Fourteenth Amendment. See Gitlow v. N. Y., 268 U. S. 652, 666; Palko v. Conn., 302 U. S. 319, 324; Staub v. City of Baxley, 355 U. S. 313, 321. Nor can there be any different view because the activities include encouragment to act; free trade in ideas must encompass the opportunity to persuade to action, not merely to describe facts, Abrams v. United States, 250 U. S. 616; I Annals of Congress, 759-760.

Thus, to attempt to give an unlawful quality to defendants' acts by describing them as "demonstrations" is an ineffectual and improper attempt to avoid the constitutional protections. Justice Harlan in a concurring opinion to Garner v. State of Louisiana, 82 S. Ct. 248 (Dec. 1961) where convictions for peaceful sit-ins were declared invalid:

> "There was more to the conduct of those petitioners than a bare desire to remain at the 'white' lunch counter

> and their refusal of a police request to move from the counter. We would surely have to be blind not to recognize that petitioners were sitting at those counters, where they knew they would not be served, in order to demonstrate that their race was being segregated in dining facilities in this part of the country. Such a demonstration, in the circumstances of these two cases, is as much a part of the 'free trade in idea'...as is verbal expression more commonly thought of as speech."

The resentment, hostility and antagonism of the local populace occasioned, it is alleged, by the visit of CORE and its members to Plaquemine cannot serve as an excuse to stifle peaceful speech and conduct, for it is unconstitutional to ban or prohibit protected activity merely because it may invite dispute or bring about a condition of unrest. Stromberg v. California, 283 U. S. 359 (1931). As stated by the Supreme Court in Terminiello v. Chicago, 337 U.S. 1:

> "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and pre-conceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky v. N. H., pp. 571-72, is never the less protected against censorship or punishment unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest." (at p. 4)

The lack of clear and present danger of serious substantive evil is attested to by plaintiffs' witnesses who made it evident that the police could have controlled each and every disturbance. Even without such testimony the court should properly have taken judicial notice of the power of the police to prevent disorder.

An injunction to prevent CORE and its membes from pursuing their lawful activities because of past occasions of violence or disorder would run afoul of Kunz v. N. Y., 340 U. S. 290. In Kunz it was held that an unpopular speaker cannot be denied the right to speak even though his past performances had excited third party interference and it was reasonably foreseeable that if a permit to speak were granted violence would ensue.

In Kunz the defendant made continued assertions of his intentions to deliver insulting addresses in derogation of other religious faiths. Notwithstanding his past conduct and announced intentions, the Supreme Court held that an ordinance which would forbid in advance his right to speak freely was unconstitutional as a forbidden restraint on protected freedoms.

Whether the process be by ordinance, arrest or injunction, the fundamental rights to free association, speech, advocacy and assembly may not be abridged because third persons threaten to stage a riot, or because peace officials believe or are afraid that breaches of the peace will occur if the rights are exercised. In Sellers v. Johnson, 163 F. 2d 877 Jehovah's witnesses were prevented from staging a meeting because town officials feared mob violence. The Court of Appeals had this to say:

> "The theory that a group of individuals may be deprived of their constitutional rights of assembly, speech and worship if they have become so unpopular with or offensive to the people of a community that their presence in a public part to deliver a Bible lecture is likely to result in riot and bloodshed, is interesting but somewhat difficult to accept. Under such a doctrine unpopular political, racial and religious groups might find themselves virtually inarticulate. Certainly the fundamental rights to assemble, speak and to worship cannot be abridged

> merely because persons threaten to stage a roit or because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised." (at p. 881)

The English cases are in agreement. In the classis case of Beatty v. Gillbanks, 9 O. B. D. 308 (1882) the Salvation Army paraded peaceably and for a lawful purpose but with the knowledge that their assembly would be opposed, and with good reason to believe that a breach of the peace would be committed by those who opposed it. Yet it was held that the Salvation Army was not guilty of an unlawful assembly for to so hold would amount to saying that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act.

Plaintiffs' moving papers in this proceeding asked the Court to restrain defendant CORE and its members from encouragement and support of persons engaging in meetings "for the purpose of fomenting violence or provoking breaches of the peace". Implicit in the bald, gratuitous and wholly unsupported assertion that CORE assists its members in "fomenting violence and provoking breaches of the peace" is the erroneous assumption that the exercise of protected freedoms can ipso facto be "the legal cause" of violence and disorder.

> "A speaker arousing third party hostility no more causes the breach of the peace than a man whose pocket is picked causes the theft by wearing a watch." Dicey, Law of the Constitution 273 (9th Ed. 1939) at 274.

By confusing free speech and association (which a state may not regulate) with violence (which may be regulated) plaintiffs seek to bring the whole within official control. Pertinent here is Justice Jackson's concurring opinion in Thomas v. Collins, 323 U. S. 516 at 548-9, where he argues that speech of political malcontents is sought to be reached by associating it with some variety of sedition. Cantwell v. Conn., 310 U. S. 302 makes the same point:

> "A state may not suppress free communication of views, religious or other, under the guise of conserving desirable conditions." (at p. 308)

The injunction here which restrains Defendants from the exercise of their rights to free speech and assembly cannot be sustained as an effort to prevent occasional and sporadic violence by others, a matter too suppositious and subjective for suppression, in any event. Stromberg v. California, 283 U. S. 359 (1931). Such a ruling, we urge, would be an encouragement to lawless elements to commit acts of violence and thereby prevent the peaceful exercise of rights granted by the Constitution.

II

The injunction violates the privileges and immunities of CORE's members.

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Art. IV, Sect. 2.

An injunction forbidding CORE to assist, finance or encourage integration in the Iberville Parish or the City of Plaquemine denies to CORE's members the right to freely associate one with another in common cause for political and social betterment. Such a denial contravenes the privilege of people of any race, religion or political faith to associate for the advancement of their interests. Goshorn v. Bar Assn. of Dist. of Columbia, 152 F. Supp. 300 Schwimmer v. United States, 279 U. S. 644; United States v. Macintosh, 283 U. S. 605.

In Hague v. Committee for Industrial Organizations, 307 U.S. 496, the question was presented whether freedom to disseminate information concerning the provisions of the National Labor Relations Act and to discuss the Act and the opportunities and advantages offered by it was a privilege or immunity of a citizen of the United States. Mr. Justice Butler, speaking for the Court held that it was:

> "Although it has been held that the Fourteenth Amendment created no rights in citizens of the

> United States, but merely secured existing rights against state abridgement, it is clear that the right peaceably to assemble and to discuss these topics and to communicate respecting them whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects."

In Hague an injunction was sought to restrain several city ordinances which provided that permits to conduct public assemblies or parades could be denied to prevent "riots, disturbances or disorderly conduct", 307 US at 516. The Supreme Court held that such a standard of granting permits was sufficiently vague as to allow "the arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking will undoubtedly prevent such eventualities."

See also the Slaughter House Cases, 16 Wall 36; Twining v. N. J., 211 US 78; Duncan v. Missouri, 152 US 377; Maxwell v. Bugbee, 250 US 525; Hamilton v. Regents of Univ. of Cal., 293 US 245.

The fact that the Court issued a temporary restraining order against CORE without a shred of evidence to show that its members designed or intended deliberately to cause violence or disorder demonstrates that CORE's members will be loathe and hesitant to organize and freely associate with one another in peaceful demonstration of common aims lest, if violence or disorder occur, they be held in contempt of Court. The outstanding injunction is, therefore, a real and substantial restraint upon their privileges and liberties as United States citizens.

III

The District Court injunction is an illegal prior restraint upon free expression.

The injunction below denies to CORE and its members, without proof of "clear and present danger", the rights of free speech, association and assembly. This kind of restraint was forbidden by the Supreme Court of the United States in Thomas v. Collins, 323 U. S. 516 where a Texas court had enjoined the defendant from soliciting union members without a permit. The defendant spoke to an assembly of union members and was convicted of contempt of court. The Supreme Court reasoned that the threat of a restraining order, backed by the power to cite for contempt hung over every word of defendant's speech and was, therefore, a prior restraint on rights to free speech. An injunction against CORE and its members is analagous to methods or devices condemned by the courts in other prior restraint cases. Kinz v. People of State of N. Y., 340 U. S. 290; Saia v. People of State of N. Y., 334 U. S. 558; Lovell v. City of Griffen, 303 U. S. 444; Hague v. C. I. O.., 307 U. S. 496; Cantwell v. Conn., 310 U. S. 296. The very existence of the District Court injunction generates such an aura of fear as to itself constitute a prior restraint. Stapleton v. Mitchell, 60 F. Supp. 51 (1945).

In addition, the injunction, by branding CORE as a "fomenter of violence", makes its communications and associations the basis for restraint on its future activity. cf. Near v. Minn., 283 U. S. 697.

IV

The injunction is unconstitutionally vague.

The District Court injunction forces CORE to risk the perils of contempt for "fomenting violence" if CORE should continue to assist those who are seeking peaceful integration in an atmosphere charged with local prejudice. The ambit of conduct which might be fairly charged as "fomentive of violence" is completely unspecified. CORE is left, therefore, inadequately warned and uncertain as to whether otherwise protected conduct, such as peaceful advocacy, is proscribed by the terms of the injunction. Thompson v. City of Louisville, 362 U. S. 199; Chaplinsky v. New Hampshire, 315 U. S. 568. Restrictions on free expression demand higher standards, Winters v. People of State of N. Y., 333 U. S. 507; 109 U. of Pa. L. Rev. 67 (1960).

The injunction is as vague as the unconstitutional statute in Herndon v. Lowry, 301 U. S. 242 where a defendant was convicted under a Georgia insurrection statute making unlawful "any attempt by persuasion or otherwise to induce others to join in any combined resistance to the lawful authority of the State." The United States Supreme Court reversed defendant's conviction, and said:

> "...If, by the exercise of prophecy, he can forecast that, as a result of a chain of causation, following his proposed action a group may arise at some future date which will resort to force, he is bound to make the prophecy and abstain, under pain of punishment, possibly of execution...
>
> "...The Law as thus construed, licences the jury to create its own standard in each case...
>
> "...No reasonable standard of guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarity violates the guarantees of liberty embodied in the Fourteenth Amendment." (at p. 264)

V

The injunction against CORE, branding it as a "fomenter of violence", is false in fact and legally damaging to CORE's reputation and membership.

The Supreme Court of the United States in Truly v. Wanzer et al., 5 How. 141, 46 U. S. 141, said with reference to the injunctive power:

> "There is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuing of an injunction. It is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate and commensurate remedy in damages." (at p. 142)

The injunction here, issued on a record absolutely barren of proof that CORE's conduct was unlawful or even not commendable, has labeled CORE as a "fomenter of violence" and a disturber of the peace.

The injunction thus is itself damaging to a national organization whose purposes are entirely peaceful and consistent with American ideals. The injunction should be vacated, for as was stated by the Court of Appeals, Second Circuit in International Register Co. v. Recording Fare Register Co., 151 F. 199 (C.A. 2d):

> "The mere fact of the issuance of any sort of injunction stigmatizes the defendants as having done or threatened to do some illegal or inequitable act of such a nature as to justify such extraordinary relief, and, if cleverly advertised, may hurt the defants in their business world." (at p. 202)

cf. Lenroot v. Interstate Bakeries Corp., 55 F. Supp. 234

We thus respectfully urge this Court to dissolve the temporary restraining order and deny the issuance of a preliminary injunction.

Respectfully submitted:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
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New Orleans, Louisiana

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

BY:________________________
MURPHY W. BELL

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

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One Wall Street
New York

ECK & ELIAS

October 3, 1963

n, Esq.
y
New York

Jurisdiction under 42USCA §1985.

he question concerns a lawsuit for
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vote in West Feliciana Parish, La.
sted by the sheriff, apparently at
tion of the registrar. Counsel are
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under § 1983 of 42USCA, and wish to
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§ 1985. The answer is yes, for the
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s of Registration in Election Law
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his authority and without authorization of
Lewis v. Brautigam, 227 F.2d 124, 129 (5 C

There is perhaps a last problem
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cf. Collins v. Hardyman, 341 U.S. 651 (195
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I hope this at least helps to co
problems under § 1985.

Sincerely,

Paul G. Chevig

Paul G. Chevigny

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RECEIVED
SEP 18 1963
VLADECK & ELIAS

September 17, 1963

Carl Rachlin, Esq.
280 Broadway
New York, N. Y.

Re: CORE v. Davis

Dear Carl:

I enclose a conformed copy of the first draft of the complaint, motion for temporary restraining order, and application for convening of three-judge court, which I prepared when I was in New Orleans last week with Bob Collins, Nils Douglas and Lolis Elie.

I also enclose for your files photostatic copies of the motion to dissolve the temporary restraining order and to dismiss the complaint in the Plaquemine case, and of the brief in opposition to the motion pending before Judge West for a preliminary injunction and in support of the motion to dissolve the temporary restraining order and to dismiss the complaint. As you know, this is the strategy we decided to follow to knock out the Plaquemine injunction, and the entire Plaquemine case, following the decision of the Fifth Circuit in the Baton Rouge case.

I also enclose for your perusal and return to me, since I will need it in connection with future work on this matter, the September 12, 1963 decision of the Fifth Circuit.

Finally, I enclose a statement of such of my expenses on the trip as have not already been paid for, that is, everything other than the tickets and the motel.

Concerning the complaint in CORE v. Davis and the application for a three-judge court, as you know, when Leo and I discussed

Carl Rachlin, Esq. September 17, 1963

this with our colleagues on Friday, we thought it might be desirable to expand the complaint so as to include not only Plaquemine, but also the situation in Baton Rouge, where they are now proceeding for a state injunction; in Clinton, where Judge West has remanded the injunction proceeding originally removed to him from state court; and also Plaquemine Parish, Leander Perez' bailiwick.

Leo and I will be getting up a second draft as soon as possible and we will, of course, all get together and discuss it. Even before then, however, I hope we will have a chance to get together this week. As you know, I am on trial but I will call you as soon as I am free.

Cordially,

Marvin

Marvin Moses Karpatkin

MMK:eb

CORE
PLAQUEMINE

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA
(Baton Rouge Division)

C. A. GRIFFON, JR., DENNIS SONGY, CHARLES P. SCHNEBELEN and EDWARD T. SUPPLE,
Plaintiffs,

vs.

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE
Defendants.

DEFENDANTS' BRIEF IN OPPOSITION TO MOTION FOR PRELIMINARY INJUNCTION AND IN SUPPORT OF MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND TO DISMISS COMPLAINT.

FILE NO. 690

MISCELLANEOUS

* *

Defendants respectfully invite the Court's attention to the September 12, 1963 decision of the United States Courts of Appeals for the 5th Circuit in the case of CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE, Appellants versus BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana, Appellees, No. 19703, F (2d) , which decision reversed and remanded the decision of this court with direction to dissolve the injunction therein and to dismiss the complaint forthwith.

Inasmuch as the issues in such case are identical with those herein, it is respectfully urged that this Honorable Court does not have jurisdiction, and that there is no justiciable federal claim at issue.

WHEREFORE, Defendants respectfully urge and move that the Motion for a Preliminary Injunction presently pending before this court be denied, and that Defendants accompanying Motion (1) to dissolve the temporary restraining order presently in effect, and (2) to dismiss the complaint, be granted.

RESPECTFULLY SUBMITTED,

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CORE
PLAQUEMINE

THE UNITED STATES OF AMERICA

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF LOUISIANA

(Baton Rouge Division)

C. A. GRIFFON, JR., DENNIS SONGY, CHARLES P. SCHNEBELEN and EDWARD T. SUPPLE,
Plaintiffs,

vs.

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE
Defendants.

MOTION

FILE NO. 690

MISCELLANEOUS

* *

Defendants respectfully move this court as follows:

1.) To dissolve the Temporary Restraining Order herein presently in effect: and

2.) To dismiss the complaint herein with prejudice, and for such other and further relief as may be just and proper.

Respectfully Submitted:

COLLINS, DOUGLAS & ELIE
2211 Dryades Street
New Orleans, Louisiana

Murphy W. Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana

Attorneys for Movers

BY:__________________________

OF COUNSEL:

Carl Rachlin, Esq.
280 Broadway
New York, New York

Marvin M. Karpatkin, Esq.
660 Madison Avenue
New York 19, New York

Floyd B. McKissick, Esq.
213½ West Mail Street
Durham, North Carolina

Beverly Axlerod, Esq.
345 Franklin Street
San Francisco, California

Leo Pfeffer, Esq.
15 East 84 Street
New York, N. Y.

CORE
[illegible]
Plaquemine

October 1, 1963

Collins, Douglas & Elie, Esq.
2211 Drayades Street
New Orleans, Louisiana

Murphy Bell, Esq.
971 South 13th Street
Baton Rouge, Louisiana

Re: Town of Clinton and Parish of East Feliciana, La. vs. CORE

Dear Bob, Nils, Lolis & Murphy:

Your motion to dissolve in the above case was excellent. If you need any help on a brief, let me know.

Regards,

CR:cr

CARL RACHLIN

RECEIVED

OCT 1 1963

ADECK & ELIAS

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

TOWN OF CLINTON AND PARISH OF
EAST FELICIANA, LOUISIANA NUMBER: A6539

VS.

CONGRESS OF RACIAL EQUALITY, ET ALS

MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER AND MOTION TO DENY ISSUANCE OF PRELIMINARY INJUNCTION

NOW INTO COURT, through undersigned counsel come CONGRESS OF RACIAL EQUALITY, and others named in said original and supplemental petition, all made defendants in the above captioned and numbered cause, and now move this Honorable Court to dissolve the temporary restraining order issued herein and deny the application for a preliminary injunction as prayed for by plaintiffs, for this, to-wit:

1.

That the petition for issuance of a preliminary injunction and on which the temporary restraining order issued fails to allege the necessary specific facts that would reasonably give rise to a conclusion, that immediate and irreparable injury, loss or damage will result to the applicants before a hearing can be had, in that the petition on its face clearly states:

a) That the applicant is the Town of Clinton and the Parish of East Feliciana, subdivisions of the State of Louisiana, having adequate public powers.

b) That the acts sought to be restrained are adequately and fully covered by numerous state, parochial and municipal laws, statutes and ordinances, which laws, statutes and ordinances are promptly and stringently enforced by the petitioners' varied units of law enforcement officers, well trained in modern police methods.

c) That the applicants have always been successful in enforcing the very statutes, laws and ordinances of which they accuse the defendants of violating.

d) That no incidents or demonstrations have occurred in or near the Town of Clinton or the Parish of East Feliciana.

e) That the petition on its face, and as shown by Article 1 of this motion, clearly shows that plaintiffs have several remedies at law.

WHEREFORE, the foregoing considered, defendants move that the temporary restraining order issued herein be dissolved and the application for a preliminary injunction be denied. In the alternative, if this Court deems that the restraining order was validly and providently issued, then defendants allege in bar of issuance of a preliminary injunction, this to-wit:

3.

That plaintiffs are seeking prior restraints on Federal First Amendment immunities, privileges and rights thus depriving your defendants of due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

4.

That plaintiffs are seeking through use of an injunction to "maintain the status quo", thus preventing defendants from "testing" and attacking the unconstitutional application of the stautues and ordinances enumerated in their petition; that such procedure is violative of defendants privileges, rights and immunities granted by the First, Fifth, Fourteenth and Fifteenth Amendments to the Federal Constitution.

5.

That plaintiffs subscribe to a policy of segregation of the races and are seeking this injunction to perpetuate this system in order to continue to discriminate against Negroes by denying them equal treatment with white persons, all in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States of America.

6.

That plaintiffs are without right to utilize the public force, be it police power or judicial fiat, to carry out either personal or public policies of racial discrimination; defendants alleging specifically that this is the sole reason for petitioners' application for the herein preliminary injunction.

7.

Further, alternatively, that the petition for issuance of a preliminary injunction is so vague and indefinite as concerns the possible violation of criminal statutes, which themselves carry stiff penalties, and coupled with the supplemental penalty of LSA-R.S. 133.1, that defendants are left without ascertainable and reasonable standards of conduct, all in violation of both State and Federal Constitutional rights, and are placed in jeopardy of being penalized twice for the same proscribed conduct.

WHEREFORE, defendants pray that these motions be filed; that a certified copy thereof be served on plaintiffs herein; that after the delay, according to law, a hearing hereon be had to determine why the temporary restraining order should not be dissolved and why the application for a preliminary injunction should not be denied, and for all equitable relief.

By Attorneys:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 Dryades Street
New Orleans, Louisiana

OF COUNSEL:

CARL RACHLIN
280 Broadway
New York, New York

FLOYD B. McKISSACK
213½
Durham, North Carolina

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

BY:______________________
MURPHY W. BELL

ORDER

THE FOREGOING MOTIONS CONSIDERED:

Let a rule nisi issue ordering plaintiffs to show cause on the ______ day of September, 1963, at _____ o'clock ___.M., why the temporary restraining order issued herein should not be dissolved, and why the application for preliminary injunction should not be denied as prayed for.

Clinton, Louisiana, September _____, 1963.

JUDGE, 20TH JUDICIAL DISTRICT COURT

CORE
Plaquemine

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEmpleton 2-9600
CABLE "KARPOLAW NEWYORK"

RECEIVED
SEP 23 1963
VLADECK & ELIAS

COPY

September 18, 1963

Smith & Walzer, Esqs.
Baronne Building
New Orleans, Louisiana

Dear Ben and Bruce:

I want to thank you both very much on behalf of Carl Rachlin, General Counsel of CORE, as well as myself, for your kindness, cooperativeness and courtesy in making your office available to me when I was in New Orleans last week. I hope we did not leave it in too bad a mess, and I am sorry that I simply did not have time to call you again before I left.

I also want to express my admiration for the excellent and courageous work which your office is doing for the Louisiana Civil Liberties Union, as I heard it related at the luncheon at the Royal Orleans, and for all of the other good fights you are engaged in down there on the front lines.

I hope that before long we will have a chance to get together again, either in New York or in New Orleans.

Yours sincerely,

Marv

Marvin Moses Karpatkin

MMK:eb
cc: Carl Rachlin, Esq.
Collins, Douglas & Elie, Esqs.

CORE
Plaquemine

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

RECEIVED
SEP 16 1963
VLADECK & ELIAS

MINUTE ENTRY:
September 6, 1963
WEST, J.

C. A. GRIFFON, JR., DENNIS SONGY,
CHARLES T. SCHMEEKLEN, and
EDWARD T. SUPPLE

VS

CONGRESS OF RACIAL EQUALITY,
JOHN DOE AND MARY DOE

MISCELLANEOUS

NO. 690

This cause came on for hearing this day on motion by respondents to dissolve temporary restraining order.

PRESENT: Samuel C. Cashio, Esq.
Charles H. Dameron, Esq.
Paul G. Borron, Jr., Esq
Edward N. Engolio, Esq.
Attorneys for petitioners

Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
Murphy W. Bell, Esq.
Attorneys for respondents

Argument.

IT IS ORDERED that the motion by respondents to dissolve temporary restraining order be, and it is hereby, DENIED.

****

Samuel C. Cashio, Esq.
Charles H. Dameron, Esq.
Paul G. Borron, Jr., Esq.
Edward N. Engolio, Esq.
Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
Murphy W. Bell, Esq.
Carl Rachlin, Esq.
F. B. McKissick, Esq.
Miss Beverly Axelrod
Eric Rosenfeld, Esq.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

MINUTE ENTRY:
September 9, 1963
WEST, J.

C. A. GRIFFON, JR., DENNIS SONGY,
CHARLES P. SCHNEBELEN and
EDWARD T. SUPPLE

VS

MISCELLANEOUS

CONGRESS OF RACIAL EQUALITY,
JOHN DOE AND MARY DOE

NO. 690

This cause came on for hearing this day on motion by petitioners for a preliminary injunction.

PRESENT: Samuel C. Cashio, Esq.
Charles H. Dameron, Esq.
Paul G. Borron, Jr., Esq.
Edward N. Engolio, Esq.
Attorneys for petitioners

Lolis E. Elie, Esq.
Murphy W. Bell, Esq.
Robert F. Collins, Esq.
Beverly Axelrod (Miss)
Attorneys for respondents

James Farmer and Ronnie Moore are called, duly sworn by Clerk, and cross-examined by counsel for petitioners.

The following witnesses are called, duly sworn by Clerk, and testify for petitioners:

W. Buford Ewell
Charles P. Schnebelen
Dennis Songy
Charles A. Griffon, Jr.
Ben F. Ragusa
Charles M. Hargroder
James Whitaker
Woodrow Dupree

Petitioners introduce as evidence exhibits P-1 through 7.

Petitioners rest.

Respondents rest.

The Court grants both parties until September 16, 1963, to file briefs or memoranda should they so desire, at which time the matter to be SUBMITTED.

By joint stipulation of counsel,

IT IS ORDERED that the restraining order issued herein on September 1, 1963, remain in full force and effect through September 20, 1963.

****

Samuel C. Cashio, Esq.
Charles H. Dameron, Esq.
Paul G. Borron, Jr., Esq.
Edward N. Engolio, Esq.

Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
Murphy W. Bell, Esq.
Carl Rachlin, Esq.

Robert F. Collins, Esq.
F. B. McKissick, Esq.
Miss Beverly Axelrod
Eric Rosenfeld, Esq.

CORE
Plaquemine

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

SEP 16 1963

VLADECK & ELIAS

MINUTE ENTRY:
SEPTEMBER 13, 1963
WEST, J.

TOWN OF CLINTON AND PARISH OF
EAST FELICIANA

CIVIL ACTION

VERSUS

NUMBER 2840

CONGRESS OF RACIAL EQUALITY, ET ALS

* * * * *

This matter came on for hearing on a former day on the motion of plaintiffs to remand this case to the Twentieth Judicial District Court for the Parish of East Feliciana, State of Louisiana, when, after hearing arguments of counsel, the Court took time to consider.

Now, after due consideration of the pleadings herein, the arguments of counsel and the briefs submitted by counsel for both the plaintiffs and the defendants,

IT IS ORDERED that plaintiffs' motion to remand be, and it is hereby GRANTED, and that this matter be, and it is hereby remanded to the Twentieth Judicial District Court in and for the Parish of East Feliciana, State of Louisiana.

REASONS

The petition originally filed in the Twentieth Judicial District Court for the Parish of East Feliciana, State of Louisiana, by the plaintiffs in this case, alleges, in essence, that the defendants, Congress of Racial Equality, and others, have violated and encouraged others to violate certain laws of the State of Louisiana. The specific laws alleged to have been violated are enumerated in detail in plaintiffs' petition. There is no allegation concerning any alleged violation of civil rights, nor is there any allegation concerning violations of the United States Constitution or any federal statutes. There is no allegation concerning any jurisdictional amount involved.

Under Title 28 U.S.C.A.§1441, a civil action brought in a state court over which the United States District Court would have original jurisdiction may, under certain circumstances, be removed by the defendant to such United States District Court. It is clear that under this section, no such removal is permissible in this instance because of the fact that it is obvious on the face of the pleadings that this Court would not have had original jurisdiction over this case. Under Title 28 U.S.C.A. §1443, it is provided that if a civil action is brought in a State Court against a person who is denied or cannot enforce in the courts of such state a right under any law providing for the equal rights of citizens of the United States, or of any persons within the jurisdiction thereof, such an action may be removed by the defendant to the District Court of the United States for the district and division embracing the place where the case is pending. This Court heard the arguments of counsel in this case and received briefs from counsel for both parties. No where is there any evidence in this matter to indicate that the defendants would be denied by the Twentieth Judicial District Court for the Parish of

East Feliciana, State of Louisiana, any right under the law providing for the equal rights of citizens of the United States. As was stated in In Re Hagewood's Petition, 200 Federal Supplement 140: "Unless some substantive or procedural rule of state law, as distinguished from the action of officials in disregard of state law, deprives a defendant of equal civil rights, the removal statute does not authorize the transfer of a criminal case to the federal court." The same would, of course, apply to the transfer of a civil case. This Court may not presume that the courts of the State of Louisiana will not afford the defendants a fair and impartial trial. The Federal Constitution, as interpreted by the Supreme Court of the United States, is just as binding on the state judge as it is on the federal judge, and it would be grossly unfair for this Court to presume that the Judge of the Twentieth Judicial District Court for the Parish of East Feliciana, State of Louasiana, would refuse to uphold the law of the land. North Carolina v. Jackson, 135 Federal Supplement 682. Since plaintiffs' original petition could obviously not be removed on the basis of diversity jurisdiction, and since it raises no question whatsoever of violation of civil rights or violation of the United States Constitution or federal statutes, and since there is no showing of any kind in this matter that the defendants will not be accorded the equal civil rights of citizens of the United States upon the trial of this matter in the Twentieth Judicial District Court for the Parish of East Feliciana, State of

Louisiana, the Court now holds that this case was improperly removed from the State Court and plaintiffs' motion to remand should be granted. Order will be signed accordingly.

(SIGNED) E. GORDON WEST

UNITED STATES DISTRICT JUDGE

William F. Kline, Jr., Esq.
Richard Kilbourne, Esq.
William E. Woodward, Esq.
R. G. Van Buskirk, Esq.

Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
Murphy Bell, Esq.
Carl Rachlin, Esq.
Beverly Axelrod
F. B. McKissick, Esq.
Eric Rosenfeld, Esq.

CORE new file
Plaquemine

LAW OFFICES OF
F. B. McKISSICK
213½ WEST MAIN STREET
DURHAM, NORTH CAROLINA

OFFICE 682-8106
RESIDENCE 682-6576

RECEIVED
AUG 28 1963
VLADECK & ELIAS

August 27, 1963

Vladeck & Elias
Counsellors at Law
Attn: Mr. Carl Rachlin
280 Broadway
New York 7, New York

Dear Carl:

Enclosed herewith, you will find two injunctions, one filed by the town of Clinton vs. Congress of Racial Equality, et al, the second filed by the town of Plaquemine and Iberville vs. Congress of Racial Equality, et al.

By the time you receive these papers you will know that the motion to dissolve the Plaquemine Injunction was heard on yesterday and same was denied. I had conferred and agreed upon the procedure followed by Eli, Collins, & Douglass of New Orleans. Our next step is an appeal to the Circuit Court which we hope to accomplish within the next 30 days.

I, also, conferred with Attorney Murphey Bell of Baton Rouge while in that area and I am convinced that we need a Legal Workshop or a conference of all CORE Attorneys for the purpose of establishing guidelines in representing the organization consistent with our Direct Action Approach.

I will talk with you about this when I am in New York on the 30th.

Yours very truly,

F. B. McKissick

FBMcK:ls

CORE
Plaquemine

Sept 9, 1963

Marvin Karpatkin, esq

Dear Marv

Enclosed are all the papers I have on Plaquemine Louisiana. Please return after you are finished. Thanks lots.

Very Truly
Yours
Carl

RECEIVED
AUG 12 1963
VLADECK & ELIAS

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA
EX. REL. MICHAEL LESSER

VS. NUMBER:____________

A. V. DOUGHTY, SHERIFF,
EAST FELICIANA PARISH, LOUISIANA FILED:____________

" "

APPLICATION FOR WRIT OF HABEAS CORPUS

TO THE HONORABLE, THE JUDGES OF THE TWENTIETH JUDICIAL DISTRICT COURT, IN AND FOR THE PARISH OF EAST FELICIANA, STATE OF LOUISIANA:

The petition of the STATE OF LOUISIANA, on the relation of MICHAEL LESSER (hereinafter referred to as "RELATOR"), respectfully shows:

1.

That relator is presently imprisoned, detained and restrained of his liberty by the Honorable A. V. DOUGHTY, a resident of and domiciled in East Feliciana Parish, Louisiana.

2.

That the said HONORABLE A. V. DOUGHTY is the duly elected Sheriff of East Feliciana, State of Louisiana, and by virtue of his authority therefrom claims to hold in custody and imprisons your relator pursuant to an "Order Fixing Appearance Bond", a duly certified copy of which is hereto attached and made a part hereof.

3.

That relator is illegally imprisoned, incarcerated and detained; that no judicial commitment to prison has been ordered by any Court of competent jurisdiction, all as required by law, notwithstanding the filing of the aforementioned "Order Fixing Appearance Bond" which purport to "release" your relator upon his giving TWO THOUSAND DOLLARS Cash as bail.

4.

Relator avers and alleges that such procedure as hereinabove described in paragraphs 2 and 3 of this Application is illegal and not pursuant to the requirements of Louisiana law, particularly LSA-R.S. 15:82; that relator is a citizen of the United States of America and specifically alleges that the State of Louisiana has denied to him due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Federal Constitution because of the averments set forth in paragraphs 2, 3 and 4 of this petition.

5.

Relator alleges and avers upon information and belief, that the said illegalities and injustices described in paragraphs 3 and 4 of this application are part of an invidious plan by certain elected officials of the State of Louisiana and the Parish of East Feliciana to deter, intimidate and discourage your relator from engaging in voter registration work among Negroes of this Parish; that TWO THOUSAND DOLLARS CASH bail is excessive and grossly violative of relator's right to bail as guaranteed by Article I, Section 12, of the Constitution of the State of Louisiana, and of the Eighth and Fourteenth Amendment to the Constitution of the United States of America.

WHEREFORE, your relator, MICHAEL LESSER prays:

I That a WRIT OF HABEAS CORPUS may issue out of this Honorable Court, THE TWENTIETH JUDICIAL DISTRICT COURT, PARISH OF EAST FELICIANA, STATE OF LOUISIANA, to the HONORABLE A. V. DOUGHTY, Sheriff of the Parish of East Feliciana, State of Louisiana, requiring and directing him to produce the body of your relator, Michael Lesser, before said Court within Twelve (12) hours or sooner, to abide what shall be awarded by the Court in the premises.

II That a copy of this application and of the writ of habeas corpus be served on the Honorable A. V. DOUGHTY, SHERIFF, in the manner prescribed by law; and that the Honorable RICHARD KILBOURNE, DISTRICT ATTORNEY, for the Parish of East Feliciana, be notified in the manner prescribed by law, particularly LSA-R.S. 15:124.

III For all general and equitable relief.

Attorneys For Defendant:

ROBERT COLLINS
NILS DOUGLAS
LOLIS ELIE
2211 Dryades Street
New Orleans, Louisiana

BEVERLY AXELROD
345 Franklin Street
San Francisco, California

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

BY:________________________
MURPHY W. BELL

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

MURPHY W. BELL

who, after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing application and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

____
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME, this _____ day of August, 1963.

____
NOTARY PUBLIC

ORDER

Considering the above application of MICHAEL LESSER claiming that he is illegally detained and imprisoned on excessive bail and restrained of his liberty by the Honorable A. V. DOUGHTY in the Jail of the Parish of East Feliciana, State of Louisiana, and it appearing to the Court that a "Writ of Habeas Corpus" ought to issue:

IT IS ORDERED that a "Writ of Habeas Corpus" issue out of and under the seal of this Honorable Court directed to the said A. V. Doughty, Sheriff of the Parish of East Feliciana, State of Louisiana, commanding him to have the body of the said MICHAEL LESSER before me in the Courtroom of this Court in CLINTON, LOUISIANA, at the hour of ________ o'clock ___.M., on the _____ day of August, 1963, to do and receive what shall then and there be considered concerning the said MICHAEL LESSER, to-gether with the time and cause of his detention and that he the said A. V. DOUGHTY have then and there the said writ.

Clinton, Louisiana, this _____ day of August, 1963.

JUDGE, THE TWENTIETH JUDICIAL
DISTRICT COURT OF LOUISIANA

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER:

MICHAEL LESSER

" "

MOTION FOR PRELIMINARY EXAMINATION

NOW INTO COURT, through undersigned counsel comes MICHAEL LESSER, and on suggesting to the Court that he is incarcerated in the Parish prison in the Parish of East Feliciana, under and by virtue of an affidavit charging him with Disturbing the peace; and on further suggesting to the court that the proof against him is not evident, nor the presumption of guilt against him great; and in the interest of justice, pursuant to R. S. 15:154 he is entitled to a preliminary examination.

WHEREFORE MOVER PRAYS:

I For issuance of an order granting a preliminary examination of the accused Michael Lesser at the earliest possible Court date.

II For all general and equitable relief.

Attorneys For Defendant:

ROBERT COLLINS
NILS DOUGLAS
LOLIS ELIE
2211 Dryades Street
New Orleans, Louisiana

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

BEVERLY AXELROD
345 Franklin Street
San Francisco, California

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

BY:______________________
MURPHY W. BELL

8-8-63
4:00 P.

Dear Carl;
Beverly Axelrod and I are
ying these pleading to-morrow at
2:00 P.M in Clinton, La
Standby for fireworks (smile)

Murphy

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

MURPHY W. BELL

who, after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

____
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME THIS, ______ day of August, 1963.

____
NOTARY PUBLIC

ORDER

Considering the foregoing:

IT IS ORDERED BY THE COURT, that the defendant, MICHAEL LESSER be, and he is hereby granted a preliminary examination herein, and that the same be held on the ______ day of August, 1963, at ____________ o'clock A.M.

Clinton, Louisiana, August ______, 1963.

____
JUDGE, 20TH JUDICIAL DISTRICT COURT

TWENTIETH JUDICIAL DISTRICT COURT

PARISH OF EAST FELICIANA

STATE OF LOUISIANA

STATE OF LOUISIANA

VS. NUMBER:

WILLIAM BROWN

" "

MOTION FOR PRELIMINARY EXAMINATION

NOW INTO COURT, through undersigned counsel comes WILLIAM BROWN, and on suggesting to the Court that he is incarcerated in the Parish prison in the Parish of East Feliciana, under and by virtue of an affidavit charging him with Speeding; that said crime was not committed in the presence of the arresting officers; and on further suggesting to the Court that the proof against him is not evident, nor the presumption of guilt against him great; and in the interest of justice, pursuant to R. S. 15:154 he is entitled to a preliminary examination.

WHEREFORE MOVER PRAYS:

I For issuance of an order granting a preliminary examination of the accused William Brown at the earliest possible Court date.

II For all general and equitable relief.

Attorneys For Defendant:

ROBERT COLLINS
NILS DOUGLAS
LOLIS ELIE
2211 Dryades Street
New Orleans, Louisiana

OF COUNSEL:

CARL RACHLIN
280 BROADWAY
NEW YORK, NEW YORK

BEVERLY AXELROD
345 Franklin Street
San Francisco, California

MURPHY W. BELL
971 South 13th Street
Baton Rouge, Louisiana

BY:____________________
MURPHY W. BELL

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned authority, personally came and appeared:

MURPHY W. BELL

who, after first being duly sworn did depose and say that he is one of the attorneys in the above matter and that he prepared the above and foregoing motion and that all the facts and allegations therein contained are true and correct to the best of his knowledge, information and belief.

____
MURPHY W. BELL

SWORN TO AND SUBSCRIBED BEFORE ME this ______ day of August, 1963.

____
NOTARY PUBLIC

ORDER

Considering the foregoing:

IT IS ORDERED BY THE COURT, that the defendant, WILLIAM BROWN be, and he is hereby granted a preliminary examination herein, and that the same be held on the _____ day of August, 1963, at __________ o'clock A.M.

Clinton, Louisiana, August _______, 1963.

____
JUDGE, 20TH JUDICIAL DISTRICT COURT

ore
Plaquemine

September 25, 1963

Nils R. Douglas, Esq.
Collins, Douglas & Elie
2211 Dryades Street
New Orleans 13, Louisiana

Dear Nils:

I have a copy of your letter of the 17th to Leo. I don't wish to interfere with the work done by you jointly, but I suggest the analogy of Doris v. Schnell, 336 U.S. 933, whereby the Court struck down a statute giving arbitrary powers to voting registrars.

In addition, as we know, "primaries" are included in the constitutional protection granted to voting, even informal ones. Terry v. Adams, 345 U.S. 461.

I hope to see you on the 5th of October.

Regards,

CARL RACHLIN

CR:cr
cc: Leo Pfeffer
Marvin Karpatkin
James Farmer

P.S. I have requested an able attorney in New York to prepare a memo on this.

42 U. S. C. 1988

PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS

The jurisdiction in Civil and Criminal matters conferred on the District Courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their Civil Rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such Civil or Criminal cause is held, so far as the same is not inconsistent with the constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature in the infliction of punishment on the party found guilty.

42 U. S. C. 1981

EQUAL RIGHTS UNDER THE LAW.

All persons within the Jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

42 U. S. C. 1983

CIVIL ACTION FOR DEPRIVATION OF RIGHTS

Every, person who, under color of any Statute, Ordinance, Regulation, Custom, or Usage, of any State or Territory, subjects, or causes, to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U. S. C. 1985

CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS

(3) Depriving Persons of Rights or Privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws, or if two or more persons conspire to prevent by force, intimidation or threat, any citizen who is lawfully entitled to vote from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived xx may have an action for the recovery of damages, occassioned by such injury or deprivation, against any one or more of the conspirators.

R.R.L.R.
Feb. 1958
Vol. 3 # 1

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-3670
523-5197

RECEIVED
SEP 18 1963
VLADECK & ELIAS

September 17, 1963

COPY

Leo Pfeffer, Esq.
15 East 84th Street
New York, N. Y.

Dear Leo:

Permit me to thank both you and Marvin for the inestimable assistance given on your visit to New Orleans.

We are drawing up a suit under 42 U.S.C. 1981, 1983, 1985 and 1988 against the Sheriff and registrar of Voters in West Feliciana Parish for the wrongful arrest of a Negro Minister who attempted to register to vote.

My problem is to vindicate jurisdiction under 1985 in an effort to make it cover not only the right to vote but also to cover the more important right (at this time) the right to register.

We have no problem vindicating jurisdiction under 1981 and 1983 but I want to construe 1988 so as to make 1985 cover the right to register to vote.

Would you be able to give me your notions on this score? Thanks. Enclosed find copies of 1981, 83, 85 and 88.

Respectfully,

NILS

N/g

Dear Carl
above is letter sent to Dr. Pfeffer.
We would appreciate it if you
would give us your notions on
the above question.

Nils

CORE PLAQUEMINE

RECEIVED
SEP 23, 1963
VLADECK & ELIAS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

C. A. GRIFFON, JR., DENNIS SONGY,
CHARLES P. SCHNEBELEN and
EDWARD T. SUPPLE

MISCELLANEOUS

VERSUS

NUMBER 690

CONGRESS OF RACIAL EQUALITY,
JOHN DOE AND MARY DOE

ORDER

This matter came on for hearing on a former day on the application of petitioners for the issuance of a preliminary injunction, when, after hearing testimony and receiving evidence, the Court took time to consider. Now, after due consideration, and for the written reasons this day assigned and filed in the record hereof:

The Court hereby withholds ruling on plaintiffs' application for the issuance of a preliminary injunction, and,

IT IS ORDERED that all further proceedings in this matter be and they are hereby STAYED, pending a final determination of the suit entitled "Town of Plaquemine and Parish of Iberville, Louisiana versus Congress of Racial Equality, et als", bearing docket number 10,149 on the docket of the Eighteenth Judicial District Court in and for the Parish of Iberville, Louisiana, or until further order of this Court.

Jurisdiction over this case is specifically retained by this Court in order that further proceedings may be had herein, and further orders or decrees issued herein as may, from time to time, be deemed necessary and proper.

Baton Rouge, Louisiana, September 20, 1963.

E. Gordon West

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

C. A. GRIFFON, JR., DENNIS SONGY,
CHARLES P. SCHNEBELEN and
EDWARD T. SUPPLE

VERSUS

CONGRESS OF RACIAL EQUALITY,
JOHN DOE AND MARY DOE

MISCELLANEOUS
NUMBER 690

REASONS FOR ISSUANCE OF STAY ORDER

This case arises out of racial demonstrations which occurred in the Town of Plaquemine, Louisiana, between August 15, 1963 and September 3, 1963. On August 21, 1963, plaintiffs, all public officials of either the Town of Plaquemine, Louisiana, or the Parish of Iberville, Louisiana, filed a complaint in which they prayed for the issuance of a temporary restraining order, and ultimately an injunction, restraining and enjoining the members of the Congress of Racial Equality, and those acting in concert with them, from violating certain state and federal laws, which violations, they alleged, deprived the citizens of the Town of Plaquemine, Louisiana, of certain constitutionally guaranteed rights. In addition to alleging the violation of various state statutes, plaintiffs alleged specifically the violation by defendants of 42 U. S. C. A. §1985, and 15 U. S. C. A. §1, et seq. The Court, being of the opinion that immediate irreparable damage was about to occur to both persons and property, issued a temporary restraining order on August 21, 1963, restraining defendants from engaging in certain enumerated activities, and also ordered that an evidentiary hearing be set for September 9, 1963, on the question of whether or not an injunction should issue herein.

Thereafter, on August 24, 1963, defendants filed a motion to dissolve the temporary restraining order, which motion was denied by Honorable Herbert W. Christenberry on August 26, 1963. Defendants then appealed this ruling to the United States Court of Appeals, Fifth Circuit, alleging that they had not been given a hearing on their motion to dissolve. Apparently, acting under the erroneous assumption that the order issued by this Court on August 21, 1963, was a preliminary injunction rather than a temporary restraining order, the Court of Appeals accepted jurisdiction over the appeal and, treating the order of August 21, 1963, as a preliminary injunction rather than as a temporary restraining order, issued, on August 29, 1963, a stay order, staying the operation of this Court's order of August 21, 1963, until such time as defendants could obtain a hearing on their motion to dissolve. Actually, the temporary restraining order of August 21, 1963, would have expired by operation of law at 5:30 o'clock p. m. on August 31, 1963, whether a stay order had been issued or not. On September 1, 1963, plaintiffs again petitioned this Court for the issuance of another temporary restraining order. Upon the showing made by plaintiffs to this Court, it was my considered opinion that the issuance of a temporary restraining order was essential and absolutely necessary if any semblance of law and order were to be preserved in the Town of Plaquemine, Louisiana, pending a hearing on plaintiffs' petition for the issuance of a preliminary injunction, which hearing was set for September 9, 1963. Consequently, a temporary restraining order, identical to the one issued on August 21, 1963, was issued by me on September 1, 1963, accompanied by written reasons therefor. Immediately thereafter defendants filed a motion to dissolve. This motion was heard on

September 6, 1963, and for the reasons assigned and filed of record herein, the motion to dissolve was denied. Thereafter, on September 9, 1963, a full evidentiary hearing was held on petitioners' request for the issuance of a preliminary injunction, after which the matter was taken under advisement. Counsel for both sides were then given until September 16, 1963, to file briefs, and the Court indicated that a ruling hereon would be made by September 20, 1963. However, the Court has now been advised that on September 19, 1963, a suit similar to this one, and involving essentially the same issues, has been filed by the officials of the Town of Plaquemine, Louisiana, and/or the Parish of Iberville, Louisiana, against the same defendants, in the Eighteenth Judicial District Court in and for the Parish of Iberville, State of Louisiana, and that the Judge of that Court has, at the request of the plaintiffs, issued a temporary restraining order therein. Thus, essentially the same issues as were presented to this Court by the instant suit are now before a Louisiana State Court of competent jurisdiction. In the case of Congress of Racial Equality, et al v. Bryan Clemmons, et al, No. 19703, United States Court of Appeals, Fifth Circuit (September 12, 1963), __________ F. 2d _________, wherein a factual situation different from the present suit was involved, but wherein the ultimate issues involved were very similar, Judge Wisdom, the author of the majority opinion, stated:

> "Moreover, this unusual federal action is in an area that is essentially one of State responsibility--the preservation of public order;"

Also, Judge Gewin, in his concurring opinion, stated:

> "In the circumstances here present, municipal officials, police officers and others charged with the preservation of law and order must have the assistance of the courts,

and this case is an example where state court action is highly appropriate. Once State Court jurisdiction has been invoked, Federal Courts should abstain from taking action, even if Federally protected rights become involved ultimately. Burford v. Sun Oil Company, 319 U. S. 315, 87 L. Ed. 1424."

While in no way agreeing with the majority opinion in the Clemmons case, supra, wherein it describes the action by this Court therein as "unusual federal action", and while in no way meaning to imply that this Court concludes or even suggests that the holding on the merits in the Clemmons case is in any way controlling insofar as a determination of the present case is concerned, nevertheless, this Court does agree with the expressions contained in both the majority opinion and the concurring opinion, as quoted above, to the effect that since state court jurisdiction over this dispute has now been invoked, this Court should abstain from further action herein pending a determination of the matter, if possible, by the proper state courts of Louisiana. A stay order will therefore be issued herein accordingly.

However, in view of the fact that this Court has determined that it does have jurisdiction over this case, and that such determination is not contrary to the findings of the majority of the Court of Appeals in the Clemmons case, jurisdiction over this case will be retained in order that further proceedings might ultimately be had herein, if necessary, and in order that such further orders and decrees may be entered herein as may, from time to time be deemed necessary and proper. The temporary restraining order issued herein on September 1, 1963, and which, by stipulation of the parties and with the approval of the Court, was to remain in effect through September 20, 1963, will now be dissolved and set aside in deference to the restraining order issued by the state court, and this Court will now withhold its ruling on the application for the issuance of a preliminary injunction for the reasons herein set forth. By the application of the doctrine of abstention, all further proceedings in this case will, by appropriate order to be entered herein, be stayed until further order of this Court.

Baton Rouge, Louisiana, September 20, 1963.

E. Gordon West

UNITED STATES DISTRICT JUDGE

CORE PLAQUEMINE

LEO PFEFFER
ATTORNEY AT LAW
15 E. 84 STREET
NEW YORK 28, N. Y.
TRAFALGAR 9-4500

RECEIVED
SEP 24 1963
VLADECK & ELIAS

9/25/63

Mike
Is
George on this he
will do it

September 23, 1963

Carl Rachlin, Esq.
280 Broadway
New York 7, N. Y.

Dear Carl:

I enclose a letter I received today from Bob Collins. In view of our telephone conversation that you have competent volunteers who are willing to do legal research I am turning this letter over to you. If you find that you cannot get anybody to do it let me know and I will see if I can do it here.

Best wishes for a Happy New Year.

Sincerely,

Leo

Leo Pfeffer

Encl.

COLLINS DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOUIS E. ELIE

TELEPHONE
523-6127

September 17, 1963

Leo Pfeffer, Esq.
15 East 84th Street
New York, N. Y.

Dear Leo:

Permit me to thank both you and Marvin for the inestimable assistance given on your visit to New Orleans.

We are drawing up a suit under 42 U.S.C. 1981, 1983, 1985 and 1988 against the Sheriff and registrar of Voters in West Feliciana Parish for the wrongful arrest of a Negro Minister who attempted to register to vote.

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Respectfully,

NILS

N/g

42 U. S. C. 1988

PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS

The jurisdiction in Civil and Criminal matters conferred on the District Courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their Civil Rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such Civil or Criminal cause is held, so far as the same is not inconsistent with the constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause, and, if it is of a criminal nature in the infliction of punishment on the party found guilty.

42 U. S. C. 1981

EQUAL RIGHTS UNDER THE LAW.

All persons within the Jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

SEP 23 1963

TOWN OF PLAQUEMINE AND PARISH OF IBERVILLE, LOUISIANA	EIGHTEENTH JUDICIAL DISTRICT COURT
VS NO. 10,149	STATE OF LOUISIANA
CONGRESS OF RACIAL EQUALITY, ET ALS	PARISH OF IBERVILLE

THE STATE OF LOUISIANA TO: Congress of Racial Equality

YOU ARE HEREBY COMMANDED AND ORDERED TO SHOW CAUSE in this suit if you can on the 26th day of September, 1963, at the hour of 10:00 o'clock A. M. why a preliminary writ of injunction in the form and substance of the temporary restraining order filed herein should not issue, to be effective during the pendency of these proceedings, and that on the hearing of said rule proof may be adduced by verified pleadings, supporting affidavits, or by proof as in ordinary cases, or by any or all of these methods, at the election of either of the respective parties litigant.

Witness my hand and seal of office this 19th day of September, 1963.

Mrs. Lois Guitreaux
Dy. Clerk of Court

CITATION

TOWN OF PLAQUEMINE AND PARISH OF IBERVILLE, LOUISIANA

Vs. No. 10149

CONGRESS OF RACIAL EQUALITY, ET ALS

STATE OF LOUISIANA

PARISH OF IBERVILLE

18th. JUDICIAL DISTRICT COURT

The State of Louisiana and said Court to CONGRESS OF RACIAL EQUALITY

You are hereby summoned either to comply with the demand contained in the petition of the said TOWN OF PLAQUEMINE AND PARISH OF IBERVILLE, LOUISIANA a copy of which accompanies the citation, or deliver your answer to the said petition in the office of the Clerk of said Court, held at the Court House at Plaquemine, in said Parish, within 15 days after the service hereof.

Witness the Honorable Judges, of said Court, this 19th day of Sept. A. D. 19 63.

Mrs. C. Idelle De Jean
Deputy Clerk.

SHERIFF'S RETURN

Received on ________ and on ________ served a copy of the within citation and also a duly certified copy of the plaintiff's petition on ________ at ________ his usual place of domicile, in the Parish of Iberville, by handing same to ________ in person.

________ Sheriff.

Received on ________ and on ________ served a copy of the within citation, also a duly certified copy of plaintiff's petition on ________ by handing same to ________ a person above the age of sixteen years residing in same domicile with the said ________ the said ________ being absent at the time of the service, all of which facts I learned by interrogating the said ________.

________ Sheriff.

Costs $________

Mileage ________

Ferry ________

FILED ________

____
Clerk, Ex-Officio, Recorder, Iberville Parish, Louisiana

EIGHTEENTH JUDICIAL DISTRICT COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

TOWN OF PLAQUEMINE AND PARISH OF IBERVILLE, LOUISIANA

NUMBER 10149

VS.

PETITION

CONGRESS OF RACIAL EQUALITY, ET ALS

TO THE HONORABLE, THE JUDGES OF THE EIGHTEENTH JUDICIAL DISTRICT COURT WITHIN AND FOR THE PARISH OF IBERVILLE, STATE OF LOUISIANA:

The petition of (1) The Town of Plaquemine, Louisiana, a municipal corporation organized and existing under the Laws of the State of Louisiana and (2) The Parish of Iberville, Louisiana, a political subdivision of the State of Louisiana, appearing herein through the Police Jury of the Parish of Iberville, the governing authority of said Parish, with respect alleges that:

1.

Defendant, Congress of Racial Equality is a foreign corporation organized and existing under the laws of the State of New York and domiciled in the City of New York, said state; said corporation although doing business and engaging in activities within the State of Louisiana, is not licensed to do business in this State, has not appointed an agent for the service of process in the manner provided by law, but maintains an office in the Town of Plaquemine, Parish of Iberville, Louisiana.

2.

Defendants, W. W. Harleaux, Jetson Davis, Tolbert Harris, Dr. Bertrand O. Tyson, Spiver Gordon, James Williams and Ronnie Moore, are all of the full age of majority and are residents of and domiciled in the Parish of Iberville, Louisiana.

3.

Defendant, Congress of Racial Equality, and the remaining defendants herein and others acting in association and concert with them, are sponsoring, financing and encouraging breaches of the peace, violence and other law violations in and around the business and residential districts and other areas of the Town of Plaquemine and Parish of Iberville, Louisiana, including but not limited to, the Parish Courthouse and Jail, City Hall, public streets, sidewalks and ways, of the said Town of Plaquemine in the vicinity of and leading to these public buildings, the parish jail annex outside the town limits of the Town of Plaquemine but within the Parish of Iberville, Louisiana, and various other places within said Town and Parish.

4.

This agitation on the part of defendants, as well as others acting in concert with them, has created situations in which large numbers of individuals and citizens have congregated on or used the public streets and ways, contrary to the laws of the State of Louisiana, ordinances of the Town of Plaquemine and Parish of Iberville, all designed to provoke incidents of violence and breaches of the peace, now and in the future, unless the defendants, and others acting in concert with them, are restrained from this agitation and such conduct; that, pursuant to meetings held for that purpose, defendants have encouraged and are encouraging others to conspire with them to violate the laws of the State of Louisiana, particularly, but not necessarily exclusively, LSA-R. S. 14:59; LSA-R. S. 14:63.4; LSA-R. S. 14:92; LSA-R. S. 14:100.1; LSA-R. S. 14:103; LSA-R. S. 14:103.1; LSA-R. S. 14:108, and various ordinances of the Town of Plaquemine and Parish of Iberville, Louisiana.

5.

Specifically, the actions of these defendants and others acting in concert with them, has resulted in the obstruction and complete blockage of certain public streets and ways in the Town of Plaquemine, thereby denying and depriving the other citizens of said Town of their right to freely use the public streets and ways without interference and hinderance; and, in addition, these acts on the part of the defendants, and others in concert with them, are such as to hinder the various law enforcement officials of the Town of Plaquemine and Parish of Iberville from giving and securing to all persons within said Town and Parish proper police, fire and other protection and securing to all citizens the right to use the public ways of the Town of Plaquemine in a normal, peaceful and customary manner.

6.

These unlawful acts of the defendants, and of others acting in concert with them, have required that the entire Police Department of the Town of Plaquemine, Louisiana, and the entire Sheriff's Department of the Parish of Iberville, Louisiana, and a substantial segment of the Louisiana State Police, as well as law enforcement officers from surrounding areas, be called out in order to maintain peace and order and to avoid violence and breaches of the peace; that, even with the presence of these police officers, the activities of the defendants, and others acting in concert with them, has been such as to block off completely public streets, and ways, and prevent free and normal access to and from public and private buildings within the downtown and other areas of the Town of Plaquemine, Louisiana.

7.

Defendants, and others acting in concert with them have encouraged, sponsored and advocated a planned program of physically blocking the entrances to various places of private business in the Town of Plaquemine by placing their bodies across said entrances.

8.

Plaintiffs allege that, on June 3, 1963, certain of the defendants herein, directed a written communication to the Mayor of the Town of Plaquemine, Louisiana, to the Iberville Parish Police Jury, and to other agencies and officials making certain requests and demands in "order to avoid civil domestic disturbances and racial tension and violence", a copy of which communication is annexed hereto, made a part hereof, and marked "Exhibit A".

9.

Prior to the preparation and mailing of the aforesaid letters there had been no racial tension or violence nor civil disturbances or disorders in the Town of Plaquemine or Parish of Iberville, Louisiana.

10.

On August 15, 1963, beginning at approximately 9:20 P. M., and apparently in protest against the arrests of certain persons in connection with a previous disturbance on the Mississippi River Ferry Boat, at Plaquemine, Louisiana, on August 11, 1963, defendants, and others acting in concert with them, organized a mass movement, consisting of approximately two hundred fifty to three hundred persons directed against the Parish Courthouse and jail, in the process of which mass march and movement songs were sung and loud language was used in such manner as was calculated to and did, in the nighttime, disturb the residents of the formerly peaceful Town of Plaquemine, Louisiana; that such mass movement and conduct necessitated the use of many police officers in order to preserve the public peace and order, although the participants in the mass movement on that occasion finally desisted after being informed by the Sheriff of Iberville Parish that they could not visit the jail at that hour of the night.

11.

On August 16, 1963, petitioners allege on information and belief that defendants, or some of them, acting in concert with others, caused to be prepared a list of written demands in the form shown on "Exhibit B" annexed hereto, and delivered the same to Honorable Charles P. Schnebelen, in his official capacity as Mayor of the Town of Plaquemine, Louisiana, who promptly informed them that even if the demands could be met and the Town Council were disposed to meet them, such action could not be taken in twenty-four hours because the Town Council was not scheduled to meet until August 29, 1963.

12.

On August 19, 1963, one James Farmer, a non-resident of the State of Louisiana, and then and now National Director of the Congress of Racial Equality, personally visited Plaquemine, Louisiana, and addressed a large gathering of persons in such manner as to incite a mass movement upon the City Hall in the Town of Plaquemine, Louisiana, the said meeting having been advertised in advance by the use of a sound truck in the Town of Plaquemine.

13

On August 19, 1963, beginning at approximately 10:25 P. M., as a result of having been so incited, organized and led by defendants, and others acting in concert with them, a mass movement consisting of approximately seven hundred to eight hundred persons was directed against the City Hall in the Town of Plaquemine, Louisiana, which said persons, in spite of a promise by the leaders of said movement to the Chief of Police that no singing or shouting would occur, promptly upon arrival at the Town Hall began to sing and yell in a loud and boistrous manner, obstructed the streets and sidewalks of the Town of Plaquemine, overturned garbage cans and threw them against parked automobiles, and generally created such a disturbance that many persons in the area who had retired for the night were awakened and appeared in their night clothes to ascertain what was occurring to so disturb the peace and tranquility of the community; defendants, and others acting in concert with them, refused, upon request of duly constituted police officers, to disburse the gathering and cease and desist the disturbance and the blocking of the public streets, ways and sidewalks; said disturbance was of such seriousness that it was necessary to call upon all of the police force of the Town of Plaquemine, Louisiana, all of the Iberville Parish Sheriff's deputies, a substantial segment of the Louisiana State Police and other law enforcement officers in the area, who succeeded in breaking up the disturbance, but only at approximately 1:00 A. M. after the use of tear gas and after the crowd had dispersed and regrouped on two different occasions and attempted a third regrouping.

14.

On August 20, 1963, at approximately 11:20 A. M., some of the defendants, and others acting in concert with them, sent a delegation to see Honorable Charles P. Schnebelen in his official capacity as Mayor of the Town of Plaquemine, Louisiana, for the purpose of insisting upon a report of the demands which had been made on August 16, 1963, as aforesaid, whereupon the said Mayor informed them, as previously that the Town Council did not meet until August 29, 1963, to which defendant, Dr. Bertrand O. Tyson, replied "we cannot wait until August 29. There will not be a Plaquemine by August 29".

15.

The acts of the defendants are wilful, intentional and deliberate acts which defendants have, in some instances, announced in advance to newspaper, radio and television press media.

16.

On Wednesday night, August 21, 1963, some of the defendants and others acting in concert with them, marched on the Courthouse and City Hall in the Town of Plaquemine, disturbing the peace and obstructing sidewalks, streets, buildings and passageways, disregarding the lawful orders of constituted authorities of the Town of Plaquemine and placing the citizens thereof in such a state that violence was imminent.

17.

On Saturday, August 24, 1963, in the nighttime, some of the defendants and approximately two hundred persons acting in concert with them marched, sang and shouted near the Iberville Parish fairgrounds jail annex, outside the limits of the City of Plaquemine, but within the limits of the Parish of Iberville, invading said grounds in spite of Sheriff's Department signs which definitely marked said roads as being closed to the public.

18.

On Wednesday, August 28, 1963, a group acting in concert with defendants, demanded a meeting with Mayor Schnebelen at City Hall at which time they demanded the release of all prisoners in the West Baton Rouge Parish Jail and stated that the group had over two hundred people at the Plymouth Rock Baptist Church who were enraged to such an extent that they would cause trouble in Plaquemine if the prisoners held in West Baton Rouge Parish jail were not released.

19.

On August 30, 1963, threats were made by various leaders of the defendant, Congress of Racial Equality, to the effect that they would cause the Town and Parish great financial damage by making the officers arrest and incarcerate their demonstrators, referring to the law enforcement officers of Plaquemine as "little people" and "hill billy cops" and further reiterating the threats of defendant, Dr. Bertrand Tyson that "There will not be a Plaquemine by August 29"; that such threats were made and such statements were uttered in such manner and under such circumstances as to incite the negro population of the Town of Plaquemine and Parish of Iberville to violence, disobedience of the laws of the State and ordinances of the Town and Parish and other conduct intended to breed hatred, racial strife and violence.

20.

On August 31, 1963, at approximately 10:00 P. M., some of the defendants and others acting in concert with them marched on the residence of Sheriff C. A. Griffon, Jr., which is located in a residential area in the Town of Plaquemine; the participants in said demonstration sang, shouted loudly, ran over citizens lawns, flowers, shrubbery and into their garages in a wild effort to disconcert and disobey the officers who were attempting to disperse them in order to maintain peace in an otherwise quiet residential neighborhood.

21.

Additionally, on August 31, 1963, some of the defendants and others acting in concert with them encouraged, incited and caused other persons to physically block the entrances to certain business establishes within the Town of Plaquemine, Louisiana.

22.

On September 1, 1963, in the nighttime, certain of the defendants herein, and others acting in concert with them, organized, sponsored and encouraged a mass movement of persons who marched on the Parish Courthouse in Plaquemine, Louisiana, obstructing the streets and sidewalks of said Town and thereupon hurled bricks, rocks and bottles at police officers; that said group then reassembled at the Plymouth Rock Baptist Church in the said City of Plaquemine and continued to throw bricks, rocks, bottles and other missles at police officers who were attempting to disperse the mob and as a result of which approximately twenty police officers were injured.

23.

As a result of said continuing mass movements and demonstrations as set forth hereinabove, several hundred persons have already been arrested; nevertheless, defendants, and others acting in concert with them have expressly and by necessary implication threatened to continue said mass disturbances and plaintiffs aver that the defendants will, unless restrained by order of this Court, continue to unlawfully sponsor, finance and encourage other persons to congregate and march on the public streets and ways in violation of the laws of the State of Louisiana, ordinances of the Town of Plaquemine, Louisiana, and Parish of Iberville, Louisiana, and orders of the duly constituted authorities of said City, Parish and State, and the said defendants will continue to foment violence and other acts likely to constitute breaches of the peace, in obstruction to and interference with the lawful rights of all other citizens and persons of the Town of Plaquemine and Parish of Iberville, Louisiana.

24.

That the only periods of time since August 15, 1963 when the Town of Plaquemine has been free from such mass movements and illegal demonstrations, have been those periods of time when Restraining Orders issued by the United States District Court for the Eastern District of Louisiana have been in effect; that the present Temporary Restraining Order issued by the said United States District Court will expire by its terms on September 20, 1963 and defendants, and others acting in concert with them, have already announced that they plan to resume said demonstrations and unlawful activities at least by September 22, 1963.

25.

Plaintiffs have no adequate remedy at law.

26.

Because unlawful acts, such as breaches of the peace, and agitation which has caused and is likely to continue to cause violence and disturbances of the public peace will cause immediate and irreparable injury to plaintiffs, and before notice can be served and a hearing had on plaintiffs' application for an injunction, it is necessary that a Temporary Restraining Order in the form and substance of the injunction prayed for issue herein.

27.

Petitioners further aver that in order to prevent the aforesaid breaches of the peace, disturbances and agitation which has caused and is likely to continue to cause violence it is necessary that a preliminary writ of injunction and, in due course a permanent injunction issue herein restraining and enjoining the said defendants and others acting in concert with them, from performing and continuing to perform the Acts complained of herein.

WHEREFORE, plaintiffs pray that the defendants, and each of them, be duly served with a copy of this petition and cited to appear and answer the same in the form and manner required by law.

Petitioners further pray that a Temporary Restraining Order issue herein, immediately, without notice, and without bond, restraining the defendants, their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, from financing, sponsoring, encouraging, or engaging in meetings or any other activities whereby violations of existing State, Municipal or Parochial Laws or Ordinances, are suggested, advocated, or encouraged; from financing, sponsoring, encouraging, or engaging in meetings, demonstrations, or other activities whereby the public ways, streets, sidewalks or highways of the City of Plaquemine, or Parish of Iberville, Louisiana, are blocked, or the unimpaired use thereof is denied to other traffic; from financing, sponsoring, encouraging, or engaging in meetings or any other activities wherein or whereby disobedience to the lawful orders of properly constituted law enforcing agencies and their personnel is advocated, suggested, or encouraged; from financing, sponsoring, encouraging, or engaging in meetings or any other activity designed or held for the purpose of impeding or obstructing the administration of justice or the orderly functions of government; from financing, sponsoring or encouraging or engaging in any activities designed to, or which do, impede, hinder or obstruct officers of the law, or officials of the Parish of Iberville, or the Town of Plaquemine, from performing and discharging the duties of their respective offices; and from conspiring, encouraging, or participating in any act for the purpose of provoking breaches of the peace.

That a rule nisi issue herein directed to the defendants, and each of them, commanding them to show cause on a day not less than two nor more than ten days from service hereof, why a preliminary injunction should not issue herein without bond, restraining and enjoining them, their agents, servants, employees and attorneys, and those persons in active concert or participation with them, from performing the acts set forth in the preceding paragraph hereof.

That, upon the trial of said rule, there be Judgment in favor of petitioners herein and against defendants granting said preliminary injunction as prayed for.

That, upon final trial hereof, Judgment be rendered in favor of petitioners and against defendants and each of them, and their officers, agents, servants, employees, attorneysand those persons in active concert and participation with them, perpetuating said preliminary writ of injunction and making it permanent in the form and substance of the temporary restraining order herein prayed for.

Petitioners further pray for all necessary orders, and for such additional relief as law, equity and the nature of the case may permit.

By Attorneys:

SAMUEL C. CASHIO
Maringouin, Louisiana
District Attorney
18th Judicial District of Louisiana

Charles H. Dameron

CHARLES H. DAMERON
Port Allen, Louisiana
Assistant District Attorney
18th Judicial District of Louisiana

Edward N. Engolio

EDWARD N. ENGOLIO
Plaquemine, Louisiana
Attorney for the Town of Plaquemine, Louisiana

PAUL G. BORRON, JR.
Plaquemine, Louisiana
Special Counsel

STATE OF LOUISIANA
PARISH OF IBERVILLE

BEFORE ME, the undersigned authority, personally came and appeared:

- - - - - - - - - - - - - - - - -CHARLES P. SCHNEBELEN,- - - - - - - - - - - - - -

and

- - - - - - - - - - - - - - - - - EDWARD T. SUPPLE,- - - - - - - - - - - - - -

who, being duly sworn, deposed and said:

That they are the Mayor of the Town of Plaquemine, Louisiana, and President of the Police Jury of the Parish of Iberville, Louisiana, respectively, and that, in such capacities they are authorized to make this affidavit; that they have read the above and foregoing petition and that all of the allegations of fact contained therein are true and correct.

CHARLES P. SCHNEBELEN

Edward T. Supple
EDWARD T. SUPPLE

Sworn to and subscribed before me
this 18 day of September, 1963.

NOTARY PUBLIC

EIGHTEENTH JUDICIAL DISTRICT COURT

PARISH OF IBERVILLE

STATE OF LOUISIANA

TOWN OF PLAQUEMINE AND PARISH OF IBERVILLE, LOUISIANA

NUMBER 10149

VS.

CONGRESS OF RACIAL EQUALITY, ET ALS

TEMPORARY RESTRAINING ORDER

Considering the verified petition filed herein and the documents thereto attached and the Court being of the opinion that a Restraining Order preliminary to a hearing upon the rule nisi for a preliminary injunction should issue, without notice, and without bond, because immediate and irreparable injury, loss or damage will result to applicants before notice can be served and a hearing had thereon, in that the unlawful acts and agitation on the part of defendants and others acting in concert with them has created situations in which large numbers of individuals and citizens have congregated on and used the public streets and ways of the Town of Plaquemine, Louisiana, contrary to the laws of the State of Louisiana, and Ordinances of the City of Plaquemine, Louisiana, all designed to provoke incidents of violence and breaches of the peace.

The Court being of the further opinion that notice and hearing before entering a Temporary Restraining Order should not be required because such unlawful acts, breaches of the peace and agitation is likely to cause additional violence and disturbances of the public peace resulting in bodily injury to large numbers of persons and because of the publicity being given to such actions, said actions will continue to occur during such time as would be required for the giving of notice:

IT IS ORDERED that defendants, Congress of Racial Equality, W. W. Harleaux, Jetson Davis, Tolbert Harris, Dr. Bertrand O. Tyson, Spiver Gordon, Ronnie Moore, and James Williams, and each of them, and each of their officers, agents, employees, and counsel, and all persons in active concert or participation with them, who receive actual knowledge of this Order by personal service or otherwise, be and they are hereby restrained and enjoined from financing, sponsoring, encouraging, or engaging in meetings or any other activities whereby violations of existing state, municipal, or parochial laws or ordinances are suggested, advocated or encouraged; from financing, sponsoring, encouraging, or engaging in meetings, demonstrations, or other activities whereby the public ways, streets, sidewalks or highways of the City of Plaquemine, or the Parish of Iberville, Louisiana, are blocked, or the unimpaired use thereof denied to other traffic; from financing, sponsoring, encouraging, or engaging in meetings or any other activities wherein or whereby disobedience to the lawful orders of properly constituted law enforcing agencies and their personnel is advocated, suggested, or encouraged; from financing, sponsoring, encouraging, or engaging in meetings or any other activity designed or held for the purpose of impeding or obstructing the administration of justice or the orderly functions of government; and from financing, sponsoring, or encouraging, or engaging in any activities designed to, or which do, impede, hinder or obstruct officers of the law or officials of the Parish of Iberville, Louisiana, or the Town of Plaquemine, Louisiana, or the State of Louisiana, from performing and discharging the duties of their respective offices; and from conspiring, encouraging or participating in any other act for the purpose of provoking breaches of the peace and fromcontinuing to violate State, Municipal or Parochial Laws and Ordinances.

This Temporary Restraining Order is issued without bond and shall expire at the end of ten days from the date hereof unless extended by this Court prior to its expiration for good cause shown and the reasons therefor entered of record herein.

IT IS FURTHER ORDERED that each of the above named defendants do show cause before this Court in the Courthouse at Plaquemine, Louisiana on the 26 day of September, 1963, at the hour of 10:00 o'clock A. M. why a preliminary writ of injunction in the form and substance of the above temporary restraining order should not issue herein, to be effective during the pendency of these proceedings, and that on the hearing of said rule proof may be adduced by verified pleadings, supporting affidavits, or by proof as in ordinary cases, or by any or all of these methods, at the election of either of the respective parties litigant.

This Order signed in my office at Port Allen, Louisiana, this 19th day of September, 1963, at the hour of 2:45 o'clock P .M.

/s/ Daniel P. Kimball
JUDGE, 18th Judicial District
Court for the Parish of Iberville,
Louisiana.

FILED

SEP 19 3 36 PM '63

/s/ Mrs Lois Guitreaux
Dy
CLERK, EX-OFFICIO RECORDER
IBERVILLE PARISH, LOUISIANA

A TRUE COPY

DATE Sept 19 1963

Deputy Clerk, Ex-officio, Recorder, Iberville Parish, Louisiana

CORE
Plaquemine

September 26, 1963

Mr. Richard Haley
Assistant National Director
Congress of Racial Equality
38 Park Row
New York 38, New York

Dear Richard:

Marvin Karpatkin, who helped us so valuably with regard to Plaquemine, has advised us that in addition to the very small bill for expenses previously sent to you, he had an additional expense while in Louisiana of $16.50 for secretarial services.

Thank you.

Cordially yours,

CR:cr

CARL RACHLIN

CORE
Plaquemine

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

RECEIVED
SEP 25 1963
VLADECK & ELIAS

September 24, 1963

Carl Rachlin, Esq.
280 Broadway
New York, N. Y.

Re: CORE v. Davis

Dear Carl:

As I wrote you on September 17, 1963, we had to use a public stenographer in order to get out the first draft of the set of papers in this case. The bill came through today from Kelly Girl Service, Inc., in the amount of $16.50 for six hours in New Orleans for the services of their Miss F.T. Sekiya. I enclose the remittance copy of the bill herewith.

You may either pay them directly, returning the copy of the bill with the check; or you may forward the check to me and I will pay them, which may be less complicated.

Yours sincerely,

Marvin
Marvin Moses Karpatkin

MMK:eb
Enc.

CORE
PLAQUEMINE

Mr Richard Haley

Dear Richard

Marvin Karpatkin who helped us so valiantly ~~in Pl~~ with regard to Plaquemine has advised us that in addition to the very small bill for expenses previously sent to you, we had an additional expense while in Louisiana of $16.50 for secretarial services.

Thank you

Cardinal

MSS
546

SEDFRE

COLLINS, BETTY et al vs. NY WORLD'S FAIR 1964-65 CORPORATION

State Historical Society of Wisconsin

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MAY 15 REC'D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

BETTY COLLINS, CAROL LUSTGARTEN,
SHERRY NOYES, DORIS RUTLEDGE, REV.
ROBERT J. STONE and
on behalf of themselves and all
other persons similarly situated,

Plaintiffs,

- against -

NEW YORK WORLD'S FAIR 1964-65
CORPORATION, a New York corporation,
and ROBERT MOSES, President of the
New York World's Fair 1964-65
Corporation,

Defendants.

- x

COMPLAINT
CIVIL ACTION NO.

1. The jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. §1343(3). This is a suit in equity authorized by Title 42 U.S.C. §1983, to restrain the deprivation under color of a state statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. This is a class action brought by plaintiffs on behalf of themselves and all other members of a class so numerous as to make it impracticable to bring them individually before this Court. Common questions of law and fact are involved and a common relief is sought. The interests of the class are adequately represented by plaintiffs.

3. This is a proceeding for a temporary restraining order, preliminary and permanent injunction enjoining the

defendants, their agents, servants, employees, attorneys, successors and all persons in active concert and participation with them from prohibiting or interfering with peaceful and orderly picketing or other peaceful and orderly dissemination of information to the public on matters of public importance on the public streets, sidewalks, parks, plazas and other public areas on the grounds of the New York World's Fair.

4. Plaintiffs BETTY COLLINS, CAROL LUSTGARTEN, SHERRY NOYES and DORIS RUTLEDGE are both White and Negro citizens of the United States and the State of Florida

Plaintiff, REV. ROBERT J. STONE is Assistant Director of the Presbyterian Council on Religion and Grace, a citizen of the United States and of the State of New York, and resident of

Plaintiff,

5. Defendant, NEW YORK WORLD'S FAIR 1964-65 CORPORATION (hereinafter "the Corporation") is organized under the laws of the State of New York, with principal place of business at Flushing Meadows, New York, and does business within the County of New York. It operates an approximately 640 acre amusement and exposition area (hereinafter "the World's Fair") at Flushing Meadows Park, New York.

Defendant ROBERT MOSES is President of the Corporation and maintains a residence in New York County, and has responsibility for issuance of rules and regulations thereof.

6. Plaintiffs COLLINS, LUSTGARTEN, NOYES and RUTLEDGE entered the World's Fair on April , 1964 with the purpose and intent of picketing in a peaceful and orderly manner the pavilion operated in the name of State of Florida at the World's Fair. This peaceful and orderly picketing was intended to inform the public of discriminatory policies against Negroes pursued by the State of Florida and to point up the contrast between the luxurious pavilion representing the State of Florida and the condition of poverty in which many Florida Negroes live. Plaintiffs walked up and down on a public walkway in front of the Florida pavilion, keeping a reasonable distance between one another, without obstructing passage of others and carrying picket signs reading "

Plaintiffs were told to stop picketing and were arrested when they failed to do so, and were charged with disorderly conduct and trespass. The complaints are annexed hereto as Exhibits "A" and "B".

7. Plaintiffs REV. STONE and believe the World's Fair is an appropriate place to inform the public of racial injustices and discrimination against Negro citizens of the United States. Such discrimination, they believe, is widespread in many states, including many of those with pavilions at the World's Fair. They desire and intend to picket and otherwise inform the public of their views in a peaceful and orderly manner on the streets, sidewalks, parks, plazas and other public areas of the Fair without obstructing or interfering with visitors to the World's Fair in any way. They are, however, threatened

with arrest if they carry out such intention due to the announced policy of defendants to prohibit peaceful picketing and other dissemination of information on the public streets and walkways of the World's Fair.

8. Defendant CORPORATION has adopted and is presently pursuing a policy, practice, custom and usage of forbidding and preventing peaceful and orderly picketing and dissemination of information regarding racial discrimination at the World's Fair. This policy, practice, custom and usage is expressed in a regulation of the CORPORATION which states:

> "Demonstrations, parades, congregations, picketing or other similar acts on the Fair site are prohibited except under written permit of New York World's Fair 1964-65 Corporation. No person may enter the Fair site with sticks, placards, handbills or other materials for use in an unauthorized demonstration. Any person violating this regulation is a trespasser, subject to ejection from the Fair, arrest and prosecution."

Such policy, practice, custom or usage has been further expressed as follows:

9. Defendants are subject to the restraints of the First and Fourteenth Amendments to the Constitution of the United States against denial and abridgement by State or Federal action of plaintiffs' rights to free speech, assembly and expression. Upon information and belief, defendants' relationships with the City of New York, the State of New York and the United States Government include, but are not limited to, the following:

(a) By Chapter 892 of the Sessions Laws of the State of New York for 1963, security employees hired by the Corporation are made peace officers of the State of New York with usual powers thereof;

(b) By Chapter 892 of the Sessions Laws of the State of New York for 1963 provides as follows:

> "A violation of any provision of law relating to safety or the preservation of order occurring in the streets, roads, highways, sidewalks or walkways of the property under the jurisdiction of New York World's Fair 1964-65 Corporation shall be deemed to have occurred on a public street, road, highway, sidewalk or walkway and not on private property."

(c) The property on which the World's Fair is located was leased to the Corporation in 1960 by the City of New York to enable the World's Fair to be conducted for educational purposes and for purposes pertaining or incidental thereto, at a rental of one ($1.00) Dollar per annum for approximately 640 acres of New York City property.

(d) City of New York has appropriated the sum of $24,000,000.00 to the use of the Corporation.

(e) City of New York has invested $6,000,000.00 in a Science Museum at the World's Fair.

(f) Vast and complex road improvement costing approximately $124,000,000.00 was financed, developed and accelerated by the State of New York and the United States of America for the sole and direct purpose of assisting to operate the World's Fair.

(g) Three high officials of the City of New York are members of the Executive Committee of the Corporation.

(h) The City and State of New York has exempted the Corporation from City and State taxes on receipts, sale, property, income and admission fees to the Fair; and the Corporation has been granted tax exemption by the United States of America.

10. Defendants' policy, practice, custom and usage of prohibiting and interfering with peaceful picketing and other peaceful dissemination of information denies plaintiffs rights guaranteed to them by the First and Fourteenth Amendments to the Constitution of the United States.

11. Plaintiffs are now suffering and will continue to suffer irreparable injury unless defendants are restrained from continued enforcement of the policy, practice, custom and usage set forth herein. They have no plain, adequate or complete remedy at law; the pursuit of any other remedy would be futile, and would not offer them substantial relief; and this suit for injunction is their only adequate remedy.

WHEREFORE, plaintiffs respectfully pray this Court to:

1. Enter a temporary restraining order and a preliminary injunction enjoining defendants, their agents,

servants, attorneys, successors, and those acting in concert with them or at their direction from continuing to enforce the policy, practice, custom and usage of denying or abridging the rights of plaintiffs and the class they represent to picket or otherwise disseminate information to the public on matters of public importance in a peaceful and orderly manner on the streets, sidewalks, parks and plazas and other public areas of the World's Fair.

2. Enter a permanent injunction enjoining defendants, their agents, servants, attorneys, successors and those acting in concert with them or at their direction from continuing to enforce the policy, practice, custom and usage of denying or abridging the right of plaintiffs and others similarly situated to picket or otherwise disseminate information to the public on matters of public importance in a peaceful and orderly manner on the public streets, sidewalks, parks and plazas and other public areas of the World's Fair.

3. Grant plaintiffs their costs herein and such other relief as may be just and proper.

Respectfully submitted,

HOWARD M. SQUADRON
32 East 57th Street
New York, N.Y. 10022

CARL RACHLIN
165 West 48th Street
New York, N.Y. 10036

MICHAEL MELTSNER
10 Columbus Circle
New York, N.Y. 10019

OF COUNSEL:

LOIS WALDMAN

Form 30—40M-702794(62) 447

AFFIDAVIT—GENERAL
SUMMARY OFFENSE

Criminal Court of the City of New York

Part 11, **County of**

CITY OF NEW YORK,
COUNTY OF N Y

Capt Frank Monahan ;

of No. WFPD, County of Queens,

City of New York, being duly sworn, says, that on April 28 1964, 19 , at about 2 p M.

at World's Fair Site; in front of Florida Exhibit

in the County of Queens City and state of New York

the defendants Betty Collins, Doris Rutledge, Sherry Noyes, Carol Lustgarten

committed the offense of disorderly conduct in violation of sec 722 sub 2 and 4 of the Penal Law, in that with intent to provoke a breach of the peace and under circumstances whereby a breach of the peace might be occasioned, the defendants did picket and carry picket signs in front of the above pavilion, thereby did annoy, disturb, and interfere with persons in the vicinity; and did obstruct the sidewalk to the annoyance of persons wishing to use said facilities; did ther by cause a crowd to collect on said sidewalk.
Defendants were asked by deponent on 3 occasions to desist from such conduct; and did refuse to desist.
Deponent advised defendants; that NYWorlds Fair 1964 -1965 Corp; the lessee and custodian of said Fair Site; had adopted and xmmxx published a regulation that prohibits demmnstzations, and picketing on Fair Site without written permission of the Fair Corp; and prohibits persons from entering the fair with placards which xxxx may be used in unauthorized demonstrations.

After being informed of said regulations, defendants continued their picketing; without authorization, and were placed under arrest.

Wherefore, deponent prays that the defendants be dealt with according to law

EXHIBIT "A"

WHEREFORE deponent prays that the defendant be dealt with according to law.

Sworn to before me
April 28 1964, 19

Frank Monahan

Pending Leave (see R & P 14/26.0)

Judge

Adjourned to 5/6/64 Bail $ Parole
1b queens
at Part
If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

APR 28 1964
Date Judge.

MORTON R. TOLLERIS

Adjourned to Bail $
at Part
If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

Adjourned to Bail $
at Part
If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

Adjourned to Bail $
at Part
If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

Adjourned to Bail $
for SENTENCE at Part
If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

FRANK COURTNEY
COURT REPORTER

Week-end/Night Part Docket 15169 | Docket 16172

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part 11, County of

The PEOPLE of the STATE of NEW YORK
vs.
Betty Collins and 3 others

Address

Defendant arraigned April 28 1964, 19
Hon. Tolleris
Judge.
Sgt Moore WFPD
Officer and Shield No.

Assignment.

The defendant on being brought before me was informed of the within charge of
722 sub 2 and 4
of his right to communicate with relatives or friends by letter or telephone, free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings and of his right to an adjournment to procure counsel or to communicate with anyone.

APR 28 1964
Judge.

Defendant pleads GUILTY
Date , 19
Judge.

Tried and found GUILTY
Date , 19
Judge.

SENTENCE

Fined $ or in default of payment imprisonment not to exceed day in Workhouse. Imprisonment in Workhouse for days.

Judge.

[illegible]
Sgt Moore

1. Betty Collins f 19
48 Henry St NYC

2 Doris Rutledge f 20
48 Henry St NYC

3 Sherry Noyes f 21
48 Henry st NYC

4 Carol Lustgarten f 19
48 Henry st NYC

Defendant informed pursuant
to Section 1694-b Penal Law
APR 28 1964
Date Judge

MORTON R. TOLLERIS

Complaint prepared by [illegible]

CASH BAIL POSTED, Treas. Cert. #

ORDER THAT THE WITHIN CASH BAIL BE REFUNDED

Date Judge.

Refund Number Court Clerk

FINGERPRINT IMPRESSIONS OF THE DEFENDANT TAKEN BY

Date Fingerprint Technician

No previous record in Criminal Court ☐
Defendant's previous record attached ☐
Police Dept. fingerprint record attached ☐

RECORD OF FINE PAID AND/OR COMMITMENT EXECUTED

Date $ Amount Collected

Above fine collected and/or commitment executed by

Fines Book entry by
Docket Book entry by

Form 250-120M-701524(63) 114

Criminal Court of the City of New York

Part 11, County of

STATE OF NEW YORK } ss.:
COUNTY OF N Y

Capt Frank Monahan

of No. wfpd County of queens

City of New York, being duly sworn, deposes and says that on April 28 1964, at about 2 p M.,

at World Fair Site; in front of Florida Exhibit in the County of Queens State of New York,

the defendants, Betty Collins, Doris Rutledge, Sherry Noyes and Carol Lustgarten did commit the crime of:

violation of section 2036 of the Penal Law; in that they did unlawfully intrude upon a piece of land; without authority of the owner thereof;

under the following circumstances:

The defendants did at the aforementioned time and place picket and carry picket signs in violation of a duly adopted and published regulation of the New York Worlds Fair 1964 1965 Corp; said corporation as lessee being the lawful custodian of the real property on which said acts of the defendants took place; which regulations prohibit picketing or other similar acts on the Fair site without written permission; and which regulations also prohibit persons from entering the Fair site with placards, handbills or other materials which may be used in an unauthorized demonstration on said fair site and which regulations further provide that any person violating this regulation is a trespasser subject to arrest

Deponent ascertained that the defendants did not have a permit issued by said FairCorp .

Deponent, a captain in the Worlds Fair police force, duly and legally established by the Worlds Fair 1964 1965 Corp; did identify himself to the defendants; stated that he represented the custodian of said property. Deponent on three occasions did warn the defendants of the contents of the aforementioned Fair Corp regulations and stated that by their unlawful conduct they were trespassing and intruding upon the real property of said Fair Corp; and were no longer on said property lawfully and with the consent of said Fair Corp.

Deponent did also warn each of said defendants on each of said three occasions to desist in such unlawful conduct or they would be subject to arrest. Each of the defendants did refuse to desist and were then placed under arrest.

EXHIBIT "B"

Sworn to before me,
April 28 1964, 19

Frank Monahan

Judge, Criminal Court of the City of New York

Pending Leaves
(see R & P 14/26.0) Vacation Other Leave:

Adjourned to 5/1/64 Bail $ 500 each

at Part, County of

1b queens

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

APR 28 1964
Date Judge.

FRANK COURTNEY
COURT REPORTER

Adjourned to Bail $

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

Adjourned to Bail $

If paroled, the defendant was advised pursuant to section 1694b of the Penal Law.

Date Judge.

SENTENCE

Date Judge.

Week End/Night Part Docket 16165 | Docket 16168

CRIMINAL COURT
OF THE CITY OF NEW YORK

Part 11, County of

THE PEOPLE OF THE STATE OF NEW YORK
vs.

1. Betty Collins f 19
48 Henry St NYC
2. Doris Rutledge f 20
48 Henry St NYC
Address
3 Sherry Noyes f 21
48 Henry St NYC
Address
4. Carol Lustgarten f 19
48 Henry St NYC
Address

Defendant arraigned April 28 1964

Hon. Tolleris
Judge.

Sgt Moore WFPD
Officer and Shield No.

Assignment.

The defendant when being brought before me was informed of the within charge of violation of

2036 Penal Law

of his right to communicate with relatives or friends by letter or telephone free of charge, of his right to the aid of counsel at every stage of the proceedings and before any further proceedings, of his right to an adjournment to procure counsel, of his right to a trial in a part of the Court held by a panel of three judges, and if such trial is ordered, of his right to an examination of the charge.

APR 28 1964
Judge.

Defendant pleads GUILTY

Date, 19

Judge.

Tried and found GUILTY

Date, 19

Judge.

Complaint prepared by

Witnesses—name and address

Sgt Moore

CASH BAIL POSTED. Dir of Fin. Cert. #

ORDER THAT THE WITHIN CASH BAIL BE REFUNDED

Date Judge.

Refund Number Court Clerk

A trial before a panel of three judges was ordered on demand by the defendant ☐ demand by the District Atty. ☐ motion of the Court ☐
(one box must be checked)

Date Judge.

Examination waived 196
Examination begun 196
Examination closed 196

ORDER OF DISMISSAL

There being no sufficient cause to believe the within named defendant

guilty of the offense within mentioned, I order said defendant to be discharged.

Date Judge.

ORDER TO ANSWER

It appearing to me by the within depositions and statements that the crime therein mentioned has been committed, and that there is sufficient cause to believe the within named defendant

guilty thereof, I order that said defendant be held to answer in Part County of

on 196 and be admitted to bail in the sum of $

and be committed to the Commissioner of Correction of the City of New York until the said defendant shall give such bail.

Date Judge.

Wld's Fair case
Flender arrest

KARPATKIN, OHRENSTEIN & KARPATKIN
COUNSELORS AT LAW

MARVIN MOSES KARPATKIN
MANFRED OHRENSTEIN
RHODA HENDRICK KARPATKIN

660 MADISON AVENUE
NEW YORK 21, N. Y.
TEMPLETON 2-9600
CABLE "KARPOLAW NEWYORK"

COPY

October 22, 1964

Miss Betty Collins
Miss Carol Lustgarten
Miss Sherry Noyes
Miss Doris Rutledge

Dear Betty, Carol, Sherry and Doris:

I assume that you have already learned of the good news through the newspapers or through the grapevine, but in case you haven't, I am glad to tell you that the Appellate Term of the New York State Supreme Court has reversed your convictions.

They reversed unanimously on the trespass count, and by a vote of 2-to-1 on the disorderly conduct charge.

The District Attorney of Queens County is seeking leave to appeal further to the New York Court of Appeals, which is our highest New York State court. If this leave is granted, we will, of course, press to have it heard and determined as quickly as possible so that the vindication of the right to peacefully picket at the World's Fair is well settled before the Fair opens in 1965.

I enclose for each of you a copy of the opinion.

Yours sincerely,

Marvin Karpatkin
Marvin M. Karpatkin

MMK:eb
Enc.
cc: Miss Janet Johnson
Carl Rachlin, Esq.

Dear Janet and Carl:

The date with Harvey Ehrlich to appear before Judge Scileppi in his Chambers in the Kew Gardens Courthouse is October 28, 1964, at 10:00 a.m. I hope you will both be able to be present.

Regards,

M.
MMK

MSS SEDFRE

COLLINS, CORRIE vs DAVIS, JIMMIE (GOVERNOR OF LOUISIANA), et al, 1963

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Folder

State Historical Society of Wisconsin

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THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Plaintiff

COMPLAINT

CIVIL ACTION

[illegible] INDIVIDUALLY
[illegible] OF THE STATE
[illegible]
[illegible] THE ATTORNEY
[illegible]
[illegible], INDIVIDUALLY AN
[illegible] OF LOUISIANA,
[illegible], BEING
[illegible] DEPARTMENT OF
[illegible] FOR THE PARISH OF
[illegible] H V. DOUGHTY,
[illegible] OF THE
[illegible] LOUISIANA, STATE
[illegible], IN
[illegible] DISTRICT ATTORN
FOR THE 20TH JUDICIAL DISTRICT OF
LOUISIANA IN AND FOR THE PARISH OF
[illegible] FELICIANA, AND JOHN R. RARICK
[illegible] AS JUDGE OF THE 20TH
[illegible] DISTRICT COURT.

Copy Received
by Mail 11/7/63
ADRCK & ELIAS
Attorneys for

Defendants

* *

1. The jurisdiction of this court is invoked under the 28 United States Code, Section 1331, this being a civil action arising under the constitution and laws of the United States, to-wit, the first and fourteenth amendments of the constitution of the United States Section 1; and title 42, United States Code, Sec. 1981, wherein the matter in controversy exceeds the sum of Ten Thousand and no/100 ($10,000.00) Dollars, exclusive of interest and costs.

2. The jurisdiction of this court is also invoked under Title 28, United States Code, Section 1343 (3). This action is authorized by title 42, United States Code, Section 1983 to be commenced by any citizen of the United States or other person within the jurisdiction thereof, to redress the deprivation under color of a State law, statute, ordinance, regulation, custom or usage of rights, privileges and immunities secured by the Constitution and laws of the United States, to-wit: the first and fourteenth amendments to the constitution of the United [illegible] States Code, Section 1981, providing for the equal rights of citizens and all other persons within the jurisdiction of the United States.

3. The jurisdiction of this court is also invoked under Titl
28, United States Code, Section 2281. This is an action for an
interlocutory and permanent injunction, restraining, upon the
grounds of their unconstitutionality under the first amendment,
and under the due process and equal protection clauses of the
fourteenth amendment of the constitution of the United States,
the enforcement of L.S.A.-R.S. 14:26; L.S.A.-R.S. 14:59, Paragr
(1) (6) (7)(8) (10); L.S.A.-R.S. 14:63.3; L.S.A.-R.S. 14:63.4;
L.S.A-R.S. 14:108; L.S.A.-R.S. 14:100.8;L.S.A.-R.S. 14:103; L.S
-R.S.14:103.1; L.S.A.-R.S. 14:47; and the enforcement of the
statute prohibiting conspiracies to violate the above mentione
statutes, and the enforcement of these statutes outlined in th
temporary restraining order issued by Judge John R. Rarick of
Twentieth Judicial District Court for the Parish of East Feli
in the case of Town of Clinton and Parish of East Feliciana v
Congress of Racial Equality, et als.

4. This is a proceeding for a declaratory judgment und
28, United States Code, Section 2201 and 2202, to declare th
rights and legal relations of the parties in controversy, t

> Whether the enforcement, execution or operation o
> L.S.A.-R.S. 14:47 are unconstitutional and void fo
> the reasons that said enforcement, execution or
> operation deny plaintiff, and all other Negro citi
> similarly situated their rights, privileges and
> immunities as citizens of the United States, free
> speech as guaranteed by the first and fourteenth
> amendments to the constitution of the United Stat
> due process of law and equal protection of the la
> as secured by the fourteenth amendment to the con
> tution of the United States, and rights and privi
> secured by Title 42 United States Code Sections
> and 1983, which said statute reads as follows:
>
> "Defamation is the malicious publication or ex-
> pression in any manner, to anyone other than the
> party defamed, of anything which tends:
>
> (1) To expose any person to hatred, contempt,
> ridicule, or to deprive him of the benefit
> public confidence or social intercourse; or
>
> (2) To expose the memory of one deceased to hat
> contempt, or ridicule; or
>
> (3) To injure any person, corporation or associ
> or persons in his or their business or occu
>
> Whoever commits the crime of defamation sh
> fined not more that Three Thousand dollars
> imprisoned for not more than one year or b

5. Plaintiff brings this action pursuant to Rule 2

of the Federal Rules of Civil Procedure for himself and

all other Negro citizens similarly situated whose number

impracticable to bring them before this court.

6. This is a proceeding for a declaratory judgment un

Title 28, United States Code, Sections 2201 and 2202, and Ru

57, Federal Rules of Civil Procedure, for the purpose of deter

ing and declaring the rights and legal relations of the parties to the matter in controversy, i.e., whether the enactment and enforcement of Louisiana Statutes L.S.A.-R.S. 14:63.4, 14:100.1, 14:103 and 14:103.1 are in violation of the first and fourteenth amendments of the Constitution of the United States.

All of these statutes were enacted by the 1960 Emergency Sessio of the Louisiana State Legislature, and became effective on June 22, 1960. The statutes are as follows:

> "63.4 Aiding and abetting others to enter or remain on premises where forbidden.
>
> A. No person shall incite, solicit, urge, encourage, exhort, instigate or procure any other person to go into or upon or to remain in or upon any structure water craft or any other movable which belongs to another including public buildings and structures, ferries and bridges, or any part, portion or area thereof, knowing that such other person has been forbidden to go or remain there, either orally or in writing, including by means of any sign hereinafter described, by the owner, lessee or custodian of the property or by any other authorised person.
>
> Providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.
>
> For the purposes of this Section, the above mentioned sign means a sign or signs posted on or in the structure, water craft or any other movable, including public buildings and structures, ferries and bridges or part, portion or area thereof, at a place or places where such a sign or signs may be reasonably expected to be seen.
>
> B. Any law enforcement officer investigating a com plaint that the provisions of this Section are being or have been violated or any such officer making any ar est for violation of the provisions of this Section, i hereby vested with authority to require any person involved in such investigation or arrest to identify himself to such officer. Upon demand of such officer the person involved shall inform the officer of his t name and address.
>
> C. Whoever violates the provisions of Sub-section A or Sub-section B above, shall be guilty of a mis demeanor and upon conviction thereof shall be fine

not more than five hundred dollars or imprisoned in the parish jail for not more than six months, or be both fined and imprisoned. Added Acts 1960, No. 79, Para. 1."

"100.1 Obstructing public passages.

No person shall wilfully obstruct the free, convenient and normal use of any public sidewalk, street, highway, bridge, alley, road, or other passageway, or the entrance, corridor or passage of any public building, structure, water craft or ferry, by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.

Providing however nothing herein contained shall apply to a bonafied legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions.

Whoever violates the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars or imprisoned for not more than six months, or both fined and imprisoned.

This section shall not be applicable to the erection or construction of any barricades or other forms of obstruction of any barricades or other forms of obstructions as a safety measure in connection with construction excavation, maintenance, repair, replacement or other work in or adjacent to any public sidewalk, street, highway, bridge, alley, road, or other passageway, nor to the placing of barricades or other forms of obstruction by governmental authorities, or any officer or agent thereof, in the proper performance of duties. Added Acts 1960, No. 80, Para. 1."

"103. Disturbing the peace.

A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public.

(1) Engaging in a fistic encounter; or
(2) Using of any unnecessarily loud, offensive, or insulting language; or
(3) Appearing in an intoxicated condition; or
(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or
(5) Holding of an unlawful assembly; or
(6) Interruption of any lawful assembly of people;
(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both.

B. Any person or persons, providing however not herein contained shall apply to a bona fide legitim labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the pu of accomplishing or securing more favorable wage st ards, hours of employment and working conditions, in or on the premises of another, whether that of individual person, a corporation, a partne or any association, and on which property a stors, restaurant, drug store, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber ship or beauty parlor, or any other lawful business is operated which engages in selli articles of merchandise or services of accommodat to members of the public, or engages generally in business transactions with members of the publi who shall:

(1) prevent or seek to prevent, or interfere or seek to interferes with the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service or accommodation, or selling to or showing merchandise to, or otherwide pursuing his lawful occupation or business with customers or prospective customers or other members of the public who may then be in such building, or

(2) prevent or seek to prevent, or interfere or seek to interfere with other persons who are expressly or impliedly invited upon said premises, or with prospective customers coming into or frequanting such premises in the normal course of the operation of the business conducted and carried on upon said premises shall be guilty of disorderly conduct and disturbing the peace, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the parish jail for not more than six months; or by both such fine and imprisonment. As amended Acts 1960, No. 70, Para. 1"

103.1 Disturbing the dpeace.

A. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment an working conditions, in or upon a shore protection stru ture or structures, or a public street or public highway,, or upon a public sidewalk, or any other pu place or building, or in any hotel, motel, store, res taurants, lunch counter, cafeteria, sandwich shop, motion picture, theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational or place, or any other place of business engaged selling or serving members of the public, or in or around any free entrance to any such place of busi or public building, or to any building owned by another individual, or a corporation, or a part or an association, and who fails or refuses to dis perse and move on, or disperse or move on when order so to do by any law enforcement officer of any muni cipality, or parish, in which such act or acts mitted, or by any law enforcement officer of the of Louisiana, or any other authorized person, or

(2) insults or makes rude or obscene remark gestures, or uses profane language, or physic or indecent proposals to or toward another or or disturbs or obstucts or interferes with an others, or

(3) While in or on any public bus, taxicab, boat ferry or other water craft or other vehicle engaged in transporting members of the public for a fare or charges, causes a disturbance or does or says, respectively, any of the matters or things mentioned in sub-section (2) supra, to, toward, or in the presence of any other passenger on said vehicle or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refuses to leave the premises of another when requested to do so by any owner, lessee, or any employee therof, shall be guilty of distrubimg the peace.

B. Whoever commits the crime of disturbing the peace as defined herein shall be punished by a fine of not more than two hundred dollars, or imprisonment in the parish jail for not more than four months, or by both such fine and imprisonment. Added Acts 1960, No. 69, Para. 1."

The plaintiff is a Negro citizen of the United States and a citizen of Louisiana, being a resident of and domiciled in the Town of Clinton, State of Louisiana,. Plaintiff is of the age of majority, a member of the Congress of Racial Equality and Chairman of the East Feliciana Chapter of the Congress of Racial Equality. Plaintiff was arrested on October 24, 1963 and charged along with four other persons with conspiracy to defame R.K. McGee in a bill of information which reads in pertinent part:

> "...conspired together to defame R.K. McGee of the Clinton Variety Store, in violation of R.S. 14:47, by maliciously exposing to public view near the entrance of the said Clinton Variety Store, a large sign or poster, bearing on one side in large print the words 'Don't Buy Segregation. Vote With Your Dollars For Freedom,' and on the other side, the words 'We Shall Overcome' which said sign or poster was held and carried by Henry Brown in furtherance of said conspiracy and which said sign or placard tended to expose R. K. McGee to hatred contempt and ridicule and to injure the said R.K. McGee in his business and occupation, which is the operation of a Mercantile business known as the Clinton Variety Store where Merchandise is sold to members of the general public."

8.) (A) Defendant, Jimmie H. Davis, is the Governor of the State of Louisiana and that Jack P. F. Gremillion is the Attorn General of the State of Louisima and they and their successors in office are named defendants, individually and in their offici capacities in which they are vested with the power to regulate the enforcement of the previously named statutes:

(B) The Defendant, Joseph S. Felps, is a resident of the Parish of East Feliciana, State of Louisiana, AND MAYOR OF TH TOWN OF CLINTON

(C) The defendant, L. E. Brian, is a resident of the

Parish of East Feliciana and President of the Police Jury for the Parish of East Feliciana.

(d) The defendant, Arch V. Doughty is a resident of the Parish of East Feliciana and Sheriff for said parish.

(e) The defendant, Richard Kilbourne is a resident of the Parish of East Feliciana and District Attorney for said parish.

(f) The defendant, John R. Rarick is a resident of the Parish of East Feliciana and Judge of the 20th Judicial District Court for the Parish of East Feliciana, State of Louisiana.

Plaintiff and all other Negro citizens of the Town of Clinton and Parish of East Feliciana are being denied their constitutionally guaranteed rights to freedom of speech, press and assembly, due process and equal protection of the laws by the herein named defendants. That the officials of the Town of Clinton and Parish of East Feliciana are depriving the plaintiff and other Negroes and persons in sympathy with them of their constitutional rights. THE OFFICIALS OF EAST FELICIANA PARISH AND THE TOWN OF CLINTON HAS ATTEMPTED to thwart, delay, hinder, prevent, and defe the voter registration program and equal rights program of the Congress of Racial Equality. There has occurred in the Parish of East Feliciana a series of incidents each of which shows a decided plan on the part of defendants to deprive the plaintiff and others similarly situated of their constitutional rights. Most recently the plaintiff and others similarly situated have been arrested while peacefully picketing in protest of segregation. Most recently on October 24, 1963 andorder was issued by Judge John R. Rarick of the Twentieth Judicial District Court for the Parish of East Feliciana in the case of Town of Clinton, et al vs. Congress of Racial Equality, number # 6539 of their docket. This order was issued contrary to the mandate of the Fifth Circuit Court of Appeals ordering that all matters connected with the temporary restraining order previously issued by stay pending further orders of the Court of Appeals. This too deprived plaintiff and others similarly situated of free speech, assembly, due processand equal protection of the laws

copy of the order above referred to is hereby annexed and a part hereof as if copied in extenso.

10.) Plaintiff and all other Negroes of the United States have been irreparably injured by reason of the unlawful activities of defendants, they have no plain, adequate, or complete remedy to redress these wrongs other than by this suit for injunction. Any other remedy would be attended by such uncertanities and delays as to deny substantive relief and would involve a multiplicity of suits and cause further irreparable injury damage, and inconvenience to plaintiff and all other Negro citizens of the United States.

WHEREFORE, plaintiff prays that:

1.) The court convene a three judge court as provided by Title 28 United States Code, Section 2284.

2.) The court advance this complaint on the docket and order a speedy hearing thereof according to law and that upon such hearing the court enter a temporary injunction to restrain the defendants and each of them from enforcing L.S.A.-R.S. 14:26; 14:59, paragraphs (1) (6) (7) (8) (10); 14:63.3; 14:63.4; 14:108; 14:100.1; 14:103; 14:103.1; 14:47, In such a way as to deprive plaintiff and others similarly situated of their rights to free speech assembly, due process and equal protection of the laws, and to restrain the defendants and each of them from enforcing in such a way as to deprive plaintiff and others similarly situated of their rights to free speech assembly, due process and equal protection of the laws AND FROM ENFORCING the statute prohibiting conspiracies to violate the above mentioned statutes and to restrain the defendants and each of them from enforcing, in such a way as to deprive plaintiff and others similarly situated of their rights to free speech assembly, due process and equal protection of the laws AND TO RESTRAIN THE DEFENDANTS FROM ENFORCING the prohibitions outlined in the temporary restraining order issued by Judge John R. Rarick of the Twentieth Judicial District Court for the Parish of East Feliciana in the case of the Town of Clinton and Parish of East Feliciana vs. Congress of Racial Equality et case number A-6539 of the docket of the Twentieth Judicial Dist Court for the Parish of East Feliciana on October 24, 1963.

3.) The court declare L.S.A.-R.S. 14:63.4, 14:100.1 14:103 and 14:103.1 unconstitutional on their face in violation the first and fourteenth amendments.

4. The court declare L.S.A.-R.S. 14:63.4, 14:100.1, 14: [illegible] unconstitutional on their face because of the [illegible] arbitrary exclusion of labor from the prohibitions [illegible]

[illegible] court, upon a final hearing of this cause will [illegible] enter a final judgment and decree that will [illegible] the legal rights of the parties in relation to [illegible] of this controversy.

[illegible] enter a final judgment and decree that will [illegible] 14:63.4, 14:100.1, 14:103 and 14:103.1 [illegible] their face in violation of the first and [illegible] the United States Constitution, and in [illegible] of the plaintiff and [illegible] and in violation of the [illegible] of the laws secured by the four- [illegible] Constitution of the United States and the [illegible] to them by Sections 1981 and 1983 of [illegible]

[illegible] final decree and judgment enjoining the [illegible] servants and employees from enforcing the [illegible] the grounds that said enforcement deprives [illegible] similarly situated from rights, privileges and [illegible] the first and fourteetnth amendments of [illegible] and title 42 U. S.C. Sections 1981 [illegible]

COLLINS, DOUGLAS & ELIE
ATTORNEYS FOR PLAINTIFF
2211 Dryades Street, 523-5197
New Orleans, Louisiana

BY: ______________________________

MURPHY BELL
971 South 13th Street
Baton Rouge, Louisiana

[illegible] Louisiana
[illegible] Gremillion
[illegible]

[illegible] Town of Clinton
[illegible] President [illegible] Police Jury
[illegible] Feliciana Parish
[illegible] East Feliciana Parish
[illegible] 20th Judicial District Court of
[illegible]

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

(BATON ROUGE DIVISION)

CORRIE C. COLLINS,
PLAINTIFF

VS.

JIMMIE H. DAVIS, et als
DEFENDANTS

COMPLAINT

CIVIL ACTION

NO:

* *

STATEMENT OF FACTS

The town of Clinton is in East Feliciana Parish, Louisiana. East Feliciana, according to the United States Census of Population: 1960 Final Report PC(1)-20B, has a total population of 20,198. Fifty Four per cent of the population or 10,906 are Negroes.

According to the Report of the United States Commission on Civil Rights for 1963 in 1956 in East Feliciana, the total white persons registered to vote were 2,817 and the total Negro persons registered to vote were 1,319. In 1959, a vote purge, sponsored by the White Citizens Council, took place and about 1,234 Negroes were removed. At present, there are approximately 120 Negroes registered to vote in East Feliciana Parish; yet there are about 2,515 whites registered.

Clinton, the parish seat, has a total population of 1,568; 745 whites and 822 Negroes.

In Plaquemine, Louisiana on July 24, 1963, the Congress of Racial Equality issued a press [redacted] release stating that it was launching a 46 person task force in the sixth Congressional District to work on voter registration. East Feliciana is in the Sixth Congressional District.

Michael Lesser, a white Syracuse University graduate student, and CORE worker was assigned to voter registration in East Feliciana. Early on the morning of August 2,1963, Michael Lesser brought four Negroes down to the Kline Building in Clinton, Louisiana. The voting registrars office is on the second floor which also houses a dentist office. Downstairs a department store is located. Henry Earl Palmer, is the registrar of voters and on his door was a sign "knock, then come in". Once Lesser knocked, entered and told Palmer that he wanted to talk to him, Palmer became hysterical and ordered him out. Lesser left and one of the persons brought down was registered.

Later on during that same day Lesser brought some more people to be registered but this time instead of going in the office he sat on the stairs leading to the office. While sitting there a deputy sheriff came to the vote office and immediately thereafter Henry Earl Palmer came out of the second story office peered over the balcony down on Michael Lesser and ordered Lesser out of the building. Before Lesser could leave he was arrested and charged with violation of L.S.A.-R.S. 14:103 (a) (2) (c) (Disturbing the Peace).

The defense filed special motions which were set to be argued on August 15th at 1:00 o'clock. When the attorneys arrived at about ten minutes to one there was a large group of Negroes outside of the courthouse who had been told they could not get in the court until one o'clock. At one o'clock they were let in and much to their suprise the first half of the courtroom was already filled with white spectators. The state then moved for a continuance of the case until the regular session of the court for the reason that certain newspaper articles had been published concerning the segregated courtroom which he said caused tension in the community and would result in neither the State nor the defense getting a fair trial. Judge John. R. Rarick over the objection of defense counsel, granted the continuance. The defense then attempted to file a motion to desegregate the courtroom. The court would not admit this motion into the record but took under advisement the filing of this motion. Observers noted that all of the segregated toilets had "out of order" signs on them.

A $2,000.00 cash bond was set on Michael Lesser, counsel was informed by the Judge that property nor surety would be accepted and a habeas corpus petition was filed on his behalf. On the day that the hearing was to be had on the Habeas Corpus application Judge John R. Rarick wanted to have the hearing in his chambers but defense counsel objected. Finally, it was agreed that a property bond would be accepted and Michael Lesser was then released on a property bond.

There had been no picketing, rallies, or demonstrations of any sort by C.O.R.E. in Clinton yet on August 20, 1963 Judge John R. Rarick issued an ex parte Temporary Restraining order without no

A series of legal moves on the part of both sides is as follows:

August 20, 1963,	The Town of Clinton and Parish of East Feliciana secured an ex parte Temporary Restraining Order.
August 28, 1963,	Hearing on the preliminary injunction set and defendants removed the case to federal court.
September 6,	Hearing in Federal Court, Judge E. Gordon West, on the motion to Remand.
September 13,	The action was remanded to the State Court, Judge John R. Rarick issued a new temporary restraining order. Hearing on the preliminary injunction set for September 23, 1963.
September 23,	Hearing on Preliminary Injunction continued by consent of the parties to September 30th.
September 24,	Plaintiffs filed Supplemental and Amended Petition adding new parties defendants and new allegations.
September 27,	Hearing on the Rule to Show Cause why additional parties should not be made defendants and petition amended. The rule was made absolute.
September 27,	Motion to Dissolve filed.
September 30,	A hearing was started on the motion to Dissolve, the motion to dissolve was taken under advisement, Bench warrants were issued for James Farmer, National Director of C.O.R.E., on the theory that since he had been subpoenaed to appear on August 28, 1963 the day the matter was removed to federal court he was still under the processes of the Twentieth Judicial District Court and notwithstanding the fact that James Farmer had not been served a bench warrant was issued; it is of equal significance that James Farmer had never been in Clinton, Louisiana.
September 30,	Over the objection of counsel the plaintiffs were permitted to orally amend their petition by way of an opening statement to the effect that C.O.R.E. was an arm of the Communist conspiracy and that the goals of C.O.R.E. was not voter registration but to subvert local government. By agreement of counsel for both sides the hearing was continued until October 14, 1963.
October 12,	Judge John R. Rarick issued a rule nisi to 26 persons ordering them to show cause on October 14, 1963 why they should not be held in contempt for disobeying the Temporary Restraining Order issued on September 13, 1963.
October 11,	Core files a notice of appeal in U.S. Dist. Ct. of the order of remand of Judge E. Gordon West issued Sept. 13, 196

October 14,	The Congress of Racial Equality filed a Motion for Stay Pending Appeal and Alternatively for a Writ of Mandamus in the U. S. 5th Circuit of Appeals. The 5th Circuit Court of Appeals granted a ten day stay of the state's injunctive order.
October 15,	The State filed a Motion to Dissolve the 5th Circuit's Stay.
October 18, 1963,	The Fifth Circuit Court of Appeals held a hearing on the Motion to Dissolve its stay in Atlanta, Georgia.
October 22,	The Fifth Circuit Court of Appeals continued its stay of October 14, 1963 until further orders from the Fifth Circuit.
October 24,	The day the ten day stay granted by the Fifth Circuit would have expired had it not been continued until furher orders from the fifth circuit. Counsel appeared in Clinton Courthouse. There were about 100 Negroes spectators sitting in the court but only two whites reporters who were sitting inside the rail. The reporters were Bob Schaefer of the United Press from Baton Rouge and Jack Owens of the Associated Press also out of Baton Rouge. Counsel for C.O.R.E. objected to any proceedings being held at all and were overruled, counsel reserving a bill of exceptions. Counsel also objected to a roll call of persons who were allegedly under subpoena to appear on August 28, 1963 and allegedly were still under process of this court. Bench warrants were issued for those who did not answer roll call, but the warrants were stayed until the matter is reassigned. The State moved that the temporary restraining order be extended for ten days and over objection of counsel and exception the temporary restraining order was continued until November 3, 1963 at 11:45 a.m. The court recited from the bench that all persons under subpoena would be required to return on November 4, 1963 since November 3, 1963 the day on which the temporary restraining order expired was a Sunday. Judge John R. Rarick read from the bench his order continuing the Temporary Restraining Order.
October 24,	Corrie Collins, Negro chairman of the Clinton Chapter of the Congress of Racial Equality and four other persons were arrested for conspiring to defame R. K. McGee by picketing in front of his store with a sign which on one side said "Don't Buy Segregation, Vote with Your Dollars For Freedom" and which sai on the other side "We Shall Overcome."
October 30,	Attorneys for Corrie Collins etc. fi a Motion to Quash and an Application a bill of Particulars in open court.

The argument on the Special Pleadings filed on behalf of Corrie Collins et al was set for argument on November 7, 1963. During the above proceedings the sheriff ordered the Negro spectators who were seated in the front part of the courtroom to move to the back of the court. So, the sheriff said this was an order of the Judge. Corrie Collins one of the defendants was among those persons directed to move.

OTHER ARRESTS

There are presently 22 persons in jail who were arrested under a warrant charging them with:

> "...resisting an officer by congregating on a public street, and refusing to move on when ordered by the sheriff..."

However, the bill of information against these people reads in pertinent part:

> ...."...violated R.S. 14:108 relative to resisting an officer, that that (sic) he intentionally obstructed Arch V. Doughty, Sheriff of the Parish of East Feliciana, an individual authorized by law to make a lawful arrest and who was then and there acting in his said official capacity, when the said ... know that the said Arch V. Doughty was acting in his said official capacity..."

Arch V. Doughty the sheriff of East Feliciana also owns a variety store which has been and is now being picketed by the Negroes of Clinton.

The bond set on the above 22 persons is $1,000. cash. No property or surety bonds will be accepted. One of the persons charged with the same crime set out above has a bond set at $2,000. cash.

There is presently three persons in jail charged with disturbing the peace at the parish jail when their activities were entirely peaceful. Their bond has been set at $500.00.

Four persons are charged with violation of L.S.A.-R.S. 14:92 in a bill of information which reads in pertinent part:

> "...violated R.S. 14:92 relative to contributing to the delinquency of a juvenile, in that he being a person over the age of 17 years, did intentionally entice and did aid Johnny Mills, a child under the age of 17 years to violate R.S. 14:103, paragraph B (2) (a) by being on premises owned by Clinton I. G. A. Store whereon

> a lawful business was being operated which engaged in selling articles of merchandise members of the public and then and there seeking to interfere with prospective customers frequenting said premises in the normal course of the operation of said business by holding, carrying and exposing to public view a large sign or placard which tended to discourage members of the public from buying from or trading with said Clinton I. G. A. Store."

Three of these defendants have cash bonds set of $1,000. each, one of them has a cash bond set of $2,000.00.

INDEX

EXHIBITS REFERRED TO IN STATEMENT OF FACTS

Attached hereto and made a part of the petition as if copied in extenso are the following documents: Page

1.) The Town of Clinton's Motion for a Continuance. 1
2.) Michael Lesser Motion to Quash. 3
3.) Michael Lesser Supplemental Motion to Quash. 7
4.) Michael Lesser Application for Bill of Particulars. 10
5.) Michael Lesser Motion to Desegregate Courtroom etc. 13
6.) Michael Lesser Application for Habeas Corpus. 16
7.) Michael Lesser Arrest Warrant and bond order. 20
8.) Town of Clinton - Application for Temporary Restraining Order. 21
9.) C.O.R.E.'s Notice of filing Petition for Removal. 30
10.) C.O.R.E.'s Petition for Removal 31
11.) C.O.R.E.'s Affidavit to Segregated Character of Courtroom. 35
12.) C.O.R.E.'s Affidavit to Segregated Character of Courtroom. 36
13.) C.O.R.E.'s Motion to Desegregate Courtroom etc. 38
14.) Remand of Judge E. Gordon West. 39
15.) Town of Clinton's Supplemental and Amending Petition. 43
16.) Oral amendment of Town of Clinton's Petition 55
17.) Contempt Citation 65
18.) C.O.R.E.'s Motion for Stay Pending Appeal and Alternatively for a writ of Mandamus. 68
19.) C.O.R.E.'s Alternative Petition for Mandamus. 70
20.) Fifth Circuit's ten day stay of Injunctive Proceedings. 74
21.) Fifth Circuit's extention of stay. 76
22.) Order of Judge John R. Rarick. 77
23.) Bill of Information, Conspiracy to Defame. 79
24.) Corrie Collins, Motion to Quash. 80
25.) Corrie Collins, Application for Bill of Particulars. 82
26.) Arrest Warrant and Bond Order for Resisting Officer. 84
27.) Bill of Information for Resisting an Officer. 107
28.) Arrest Warrants and Bond Order for Disturbing the peace at Parish Jail. 108
29.) Bill of Information, Contributing to the Delinquency of a Juvenile. 114
30.) Arrest Warrant and Bond Order for Contributing to the delinquency of a Juvenile. 115

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

CORRIE C. COLLINS *

versus *

HON. JIMMIE H. DAVIS, ET ALS *

* * * * * * * * * * * * * * * * *

CIVIL ACTION

NO. ________

MOTION FOR PRELIMINARY INJUNCTION

Plaintiff moves [redacted] the court for a preliminary injunction enjoining the defendants, their agents, servants, employees and attorneys and all persons in active concert and participation with them, pending the final hearing and determination of this action from enforcing L.S.A.-R.S. 14:25; 14:59 paragraphs (1) (6) (7) (8) [illegible] 14:63.4; 14:106; 14:100.1; 14:103; 14:103.1; 14:47 in such a way as to deprive plaintiff and others similarly situated of their rights to free speech, assembly, due process and equal protection of the laws and to restrain the defendants and each of them from enforcing in such a way as to deprive plaintiff and others similarly situated of their rights to free speech, assembly, due process and equal protection of the laws AND FROM ENFORCING the statute prohibiting conspiracy to violate the above mentioned statutes and to restrain the defendants and each of them from enforcing in such a way as to deprive plaintiff and others similarly situated of their rights to free speech, assembly, due process and equal protection of the laws AND FROM ENFORCING the prohibitions outlined in the temporary restraining order issued by Judge John R. Rarick of the Twentieth Judicial District Court for the Parish of East Feliciana in the case of the Town of Clinton and Parish of East Feliciana vs. Congress of Racial Equality, et als, case number [illegible]-6539 of the docket of the Twentieth Judicial District Court for the Parish of East Feliciana on October 24, 1963.

Unless restrained by this court defendants will perform the acts referred to;

Such action by the defendants will result in irreparable injury, loss and damage to the plaintiff.

The issuance of a preliminary injunction herein will not cause any inconvenience or loss to defendants, but will prevent irreparable injury to plaintiff.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
ATTORNEYS FOR PLAINTIFF
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NEW ORLEANS, LOUISIANA

BY: ______________________
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Baton Rouge, Louisiana

OF COUNSEL:

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FLOYD B. McKISSICK
213½ W. Main Street
Durham, N. C.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

(BATON ROUGE DIVISION)

[illegible] C. COLLINS

VS.

HONORABLE JIMMIE H. DAVIS,
ET AL.

CIVIL ACTION

NO.

* *

APPLICATION FOR CONVENING OF THREE JUDGE DISTRICT COURT

Plaintiff, upon his complaint heretofore filed, hereby makes application for hearing of this cause and of the plaintiff's motion for an interlocutory injunction herein before a three judge district court as required by 28 U.S.C. 2284, and requests that the Chief Judge of the United States Court of Appeals for the Fifth Circuit be notified pursuant to Section 2284, Title 28, United States Code,1 of presentation of plaintiff's application for injunction in order that necessary designation of Judges for said court may be made.

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546

UNIVERSITY-CIA HEARING, 1967

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HEARINGS BEFORE THE ADVISORY PANEL TO CONSIDER THE STUDENT DEMONSTRATION OF FEBRUARY 8, 1967

---x

Columbia University,
Low Memorial Library,
116th Street and Broadway,
New York, N. Y.

February 20, 1967,
2:30 p.m.

Before:

PROFESSOR CURTIS J. BERGER, Chairman,

PROFESSOR AARON W. WARNER,

DEAN KEVIN SULLIVAN,

DEAN DAVID B. TRUMAN,

MR. DAVID LANGSAM,

MR. DAVID MENT,

Advisory Panel

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COUNSEL:

PROFESSOR WILLIAM K. JONES

ATTORNEY CARL RACHLIN

RECORDERS:

LEE HELLER,
Taper Recorder

RICHARD KAUFMAN,
Shorthand Reporter and Notary Public of
the State of New York

o0o

THE CHAIRMAN: This panel has been formed by President Kirk to conduct hearings on the charges arising out of the sit-in demonstration which occurred at Dodge Hall on the University campus on February 8th.

At the conclusion of the hearings, we are to make recommendations to President Kirk, who, under the charter of this University, bears ultimate responsibility for student discipline.

As you know, this hearing procedure, the formation of an advisory panel marks a departure from prior practice. That is why I said before there is more on trial this week than the charges against nineteen students.

The tripartite makeup of the panel, equally representative of the faculty, administration and student body, as well as the presence of the student press, recognizes the University-wide interest in the charges that have been made and in a procedurally fair disposition of the charges.

President Kirk has directed this panel to determine its own procedures and in this record we will endeavor to conduct these hearings fairly and, let me add, compassionately.

Each student or his advisor or counselor--and I understand that many of the students are represented here by Attorney Carl Rachlin--will be privileged to examine any witness appearing in behalf of the University. Each student will be privileged to introduce witnesses in his own behalf. Finally, each student will be given an opportunity to make a full statement; or if he prefers to make no statement at all, he will be privileged to remain silent, without inference being drawn from the silence.

As to the sequence of the hearings, we will ask that the University officials who are presenting the charges or who can give an account of the event on which the charges are based appear before us first.

Prof. Jones of the Law School has been asked by the University to direct his presentation. After each man has testified, he will be subject to examination by the members of this panel and also to cross-examination by the students or their representatives. After the University has finished with its case, the students will then be able to present theirs.

When we reach that point, it will be helpful if the panel were informed as to the identity of the witnesses who will appear for the students, so if there are many such witnesses, we can prepare an orderly schedule and such witnesses will be subject to examination by the members of this panel.

When testimony is complete, final statements will be allowed Mr. Jones, Mr. Rachlin and the advisors of any students for which Mr. Rachlin does not appear.

In addition, written memoranda may be submitted on the students' behalf as well as any statements from any witnesses not appearing in person,that may be helpful to the panel.

The stenographic transcript of the hearings is being made and several copies will be available when finished, to the students.

We have scheduled this hearing to continue until 5:00 o'clock this afternoon, and if we have not concluded, we will adjourn until 9:00 o'clock tomorrow.

Let me say one other thing which I had not considered saying in advance: that the concept of a student observer is one who is here to observe.

May I call the names of each of the students and ask them if they will indicate who their advisor is or if they are here or being represented by Mr. Rachlin, if they will so indicate.

Benson B. Bobrick?

MR. BOBRICK: I am being represented by Attorney Rachlin.

THE CHAIRMAN: I will ask each of you, since you have been given the choice, whether it is your preference that the hearings be held as they are contemplated, with members of the student press in attendance, or is it your prreference to have a separate hearing?

MR. RACHLIN: For each person?

THE CHAIRMAN: Yes.

MR. BOBRICK: It is my preference the students' counsel be represented--[unintelligible].

THE CHAIRMAN: Robert P. Bobrick?

MR. ROBERT BOBRICK: I am being represented by Attorney Rachlin and I would also like my case to be heard in the presence of all the rest.

THE CHAIRMAN: John Cauman?

MR. CAUMAN: I am being represented by Dean Flanigan and I would like to have the press, both campus and off-campus, present.

THE CHAIRMAN: Robert Dillon?

MR. DILLON: I am being represented by Attorney Rachlin and Paul Rockwell, if possible, and I would like to say I am quite glad this room is full.

THE CHAIRMAN: Richard Fioravanti?

MR. FIORAVANTI: I think I am being represented by Professor Peter Pardue, and I would like everybody to stay.

THE CHAIRMAN: Mr. Fioravanti, you are not represented by Mr. Rachlin, is that right?

MR. FIORAVANTI: Excuse me?

THE CHAIRMAN: You are not being represented by Mr. Rachlin?

MR. FIORAVANTI: I am not.

THE CHAIRMAN: Is Prof. Pardue here?

MR. FIORAVANTI: I don't know.

THE CHAIRMAN: Is Prof. Pardue here?

VOICE: He is teaching a class.

THE CHAIRMAN: Mr. Fioravanti, you may, if you wish, have your hearings heard separately and not in the presence of the press.

MR. FIORAVANTI: I don't mind anybody's presence. I would like more present. What does representation entail?

THE CHAIRMAN: The advisor may examine witnesses on behalf of the University. He may present a statement in your behalf.

Paul Gallagher?

MR. GALLAGHER: I did not receive a letter telling me to appear at this hearing. I am here as a witness. (Laughter)

THE CHAIRMAN: You have not been notified of the hearing?

MR. GALLAGHER: That's right.

THE CHAIRMAN: You are not appearing, then. Mr. Gallagher, we may have to postpone your case until the U. S. mails catch up with you.

Mr. George Gruenthal?

MR. GRUENTHAL: I am being represented by Attorney Rachlin.

THE CHAIRMAN: Mr. Chris K. Iijima?

MR. IIJIMA: I am representing myself and I wish the public to hear my case.

THE CHAIRMAN: You would like the public to be present?

MR. IIJIMA: Yes.

THE CHAIRMAN: Mr. Iijima says he is not represented by Mr. Rachlin and that he does want the hearings in this matter public.

Do you have an advisor?

MR. IIJIMA: Yes, Mr. Richard--of the University French Department.

THE CHAIRMAN: Mr. Greenman.

John Jacobs?

MR. JACOBS: I am represented by Attorney Rachlin and Paul Rockwell.

THE CHAIRMAN: Who is Paul Rockwell?

MR. ROCKWELL: I am a graduate student of Columbia and working with Mr. Rachlin.

PROF. WARNER: You are an advisor?

MR. ROCKWELL: I guess so. Apparently.

THE CHAIRMAN: Susan Kaplow?

MISS KAPLOW: I am represented by Mr. Rachlin and Rockwell.

THE CHAIRMAN: Michael McCann?

MR. McCANN: I am represented by Mr. Rachlin and I have yet to receive my letter.

THE CHAIRMAN: We will then have to decide in your case, Mr. McCann, whether to postpone the hearings with respect to the charges made against you.

MR. McCANN: I am willing to proceed. I am sure I will get the letter in the mail.

THE CHAIRMAN: Michael Melzer?

MR. MELZER: I am being represented by Attorney Rachlin and Paul Rockwell.

I would like tomorrow's hearings to be held in Low Rotunda, if possible.

THE CHAIRMAN: James Newton?

MR. NEWTON: I am being represented by Mr. Rachlin and Mr. Rockwell, and also would like to request a competitive newspaper be present because of the inadequate and false coverage of the Columbia Spectator--(applause)

THE CHAIRMAN: There must not be any more of that.

James Newton? That was you.

Anthony Papert?

MR. PAPERT: I am being represented by Mr. Rachlin and Mr. Rockwell. I am glad the hearings are open, but I would like them to be open to the outside world.

THE CHAIRMAN: John Schidlovsky?

MR. SCHIDLOVSKY: I am being represented by Prof. Goldman.

THE CHAIRMAN: Is he here?

PROF. JONES: Mr. Chairman, I received a letter from Prof. Goldman but no indication whether he would be here or not.

THE CHAIRMAN: Richard Sober?

MR. SOBER: I am being represented by Mr. Rachlin and Rockwell, and I wish more people to be here.

THE CHAIRMAN: Edward Spannaus?

MR. SPANNAUS: I am being represented by Mr. Rachlin and Mr. Rockwell. I would like tomorrow's hearing to be held in Low Rotunda.

THE CHAIRMAN: Harry Steinbauer?

MR. STEINBAUER: I am being represented by Mr. Rachlin. I would like the hearings to be as open as possible.

THE CHAIRMAN: They are.

Roger J. Taus?

MR. TAUS: I am being represented by Mr. Rachlin and Paul Rockwell. Based on some of the previous remarks and the organization, the CIA in this hearing, I think the hearings should be certainly much more open and be moved to Low Rotunda tomorrow.

THE CHAIRMAN: According to my notes, Mr. Rachlin, you are here as counsel for Benson Bobrick, Robert Peter Bobrick, Robert Dillon, George Gruenthal, John Jacobs, Susan Kaplow, Michael McCann, Michael Melzer, James Newton, Anthony Papert, Richard Sober, Edward Spannaus, Harry Steinbauer and Roger J. Taus.

Is that correct?

MR. RACHLIN: That is correct.

THE CHAIRMAN: John Cauman has asked Dean Flanigan, is that correct, to act as his advisor?

MR. CAUMAN: That is correct.

THE CHAIRMAN: Dean Flanigan is not here?

MR. CAUMAN: He is here.

THE CHAIRMAN: Richard Fioravanti has asked Prof. Pardue to act as his advisor and he is not here.

MR. FIORAVANTI: He is not. He has unfortunate office hours.

THE CHAIRMAN: We will make every effort, Mr. Fioravanti, to get Prof. Pardue here just as quickly as we can.

Paul Gallagher, again, is represented by-- you have not received the letter and you are here as a witness.

Mr. Iijima, you are represented by?

MR. IIJIMA: I am representing myself, but Mr. Greenman is advising me.

THE CHAIRMAN: Is he here now?

MR. GREENMAN: Yes.

THE CHAIRMAN: John Schidlovsky is being advised by Prof. Goldman. Is Prof. Goldman here yet?

MR. SCHIDLOVSKY: Obviously not.

PROF. JONES: Prof. Berger, the implication I draw from Prof. Goldman's letter is that he will not be here, but will submit a written statement in behalf of Mr. Schidlovsky.

THE CHAIRMAN: Mr. Schidlovsky, is that satisfactory to you? Because you are entitled to an advisor. Prof. Goldman has sent a letter in which he indicates that he does not plan to be here, but he will submit a statement in your behalf.

Would you like to secure some other advisor?

(continued on page 14)

MR. SCHIDLOVSKY: I would like to see if I could get Mr. Goldman here through my own efforts or through the committee. Until I speak to him at a later date, I would like to reserve who I take as my advisor.

THE CHAIRMAN: I am sorry, you would like to do what?

MR. SCHIDLOVSKY: I would like to reserve who I get as my advisor.

THE CHAIRMAN: Do you wish us to postpone the hearing and charges made against you, Mr. Schidlovsky, until Prof. Goldman appears or whoever you decide to advise you, appears?

MR. SCHIDLOVSKY: I would rather represent myself.

THE CHAIRMAN: Mr. McCann. You indicated that you were prepared to have the hearings proceed against you despite the fact you have not received a copy of the letter advising you that the hearings began at 2 o'clock this afternoon.

Perhaps I should read to you the charges that are set forth in that letter so you are aware of the charges that are being made against you.

They are interference with the University activity, refusal to obey University officer performing his duties, refusal to identify yourself or to present your ID card when asked to do so.

Are you fully aware of the nature of the charges that have been made?

MR. McCANN: I have seen a photostat of one.

THE CHAIRMAN: Is your address, Mr. McCann, 830 West 177th Street, Apartment 30, Brooklyn, New York?

MR. McCANN: Apartment 3D. It is not in Brooklyn. It is in Manhattan.

(Laughter.)

MR. McCANN: The letter I received from President Kirk came by way of Brooklyn and the Bronx.

THE CHAIRMAN: This should be Manhattan?

MR. McCANN: Yes.

THE CHAIRMAN: You are lucky it did not go to Staten Island as well.

Mr. Gallagher, the address we have for you is 30 Westwood Road, Great Neck, Long Island.

MR. GALLAGHER: The reason I didn't get the letter is because I am no longer--(unintelligible).

THE CHAIRMAN: Did you formerly withdraw, Mr. Gallagher, from the University?

MR. GALLAGHER: I formerly withdrew-- (unintelligible).

MR. RACHLIN: I have some motions I would like to make.

THE CHAIRMAN: Yes.

MR. RACHLIN: If you don't mind I prefer to stand.

THE CHAIRMAN: Yes.

MR. RACHLIN: I would like at this moment to address myself to several applications with regard to the panel itself. The panel, of course, was assembled by Pres. Kirk as you have so advised us. As attorney for the majority of the students, it is my obligation to make certain that the panel represents in its best sense, a reasonable opportunity for a fair hearing and without necessarily reflecting on the character in any way on the panel.

Nevertheless, there may be prejudicial matters that have come prior to the hearing which could affect the judgment of any member of the panel and I am sure we would all agree we must avoid impropriety or the appearance of impropriety.

With that in mind, I move accordingly that the panel ask Dean Truman to excuse himself from this hearing.

I would conclude, as I assume most reasonable men would, that with the knowledge we have at the present time that the Dean would not have made some of the statements he made back in December concerning the events which led up to the act that is presently before this panel, but nevertheless having in a sense prejudiced the right of the organization to appear on Columbia Campus and to have assumed that that organization was a normal function of the University is one that in my mind would indicate that it is possible that he would not be able to look at this matter in a manner that is beyond cavil as to the propriety of any action to be taken by this panel.

I therefore without in any way indicating a reflection on his capacity, ability, feel in light of the statements he has made which appeared in various places including the Columbia Spectator, that the panel, accordingly, ask that Dean Truman not sit.

My second motion which I would address is rather more of an inquiry than a motion.

I address this with regard to Mr. Langson who is one of the student members of the panel.

Obviously none of us would consider any guilt by association so that I ask Mr. Langson to advise us whether because of his association with the organization which was the basis for the internal discussion of the problem we are concerned with today, whether that association in any way, would affect his ability to make a fair and open judgment on this matter.

The third application that I make relates to the question that a prominent trustee of either the University itself or one of the important constituent members of the University has been named, only yesterday, in The New York Times, as one of the important directors of an institution which was considered a conduit for many of the funds of this organization which in a sense is also on trial today.

Now, the application that I make in that regard concerns whether in that capacity funds filtered through that Foundation into the University itself and whether, therefore, the University is not really in a position to evaluate these charges because of its own interest.

The fourth application--

THE CHAIRMAN: Before you move onto the fourth application, Mr. Rachlin, it is unclear to me what you are asking in your third application.

MR. RACHLIN: What I am asking for really is a disclosure before the hearing proceeds of what the University's interest is in this proceeding. That is, does the University or has the University been a beneficiary of funds through this Foundation which in a way would force it to prejudge what is taking place and whether the University's interest, if any, and I of course know not whether there was any, was such as to require the University to have a stake in defending its initial position which led to the events.

In other words, what I am saying is, I would conclude, as I assume most reasonable people would conclude--

THE CHAIRMAN: Excuse me just a minute. There is to be no photography in the hearing room.

I am sorry, Mr. Rachlin.

MR. RACHLIN: Prof. Berger, and members

of the panel, I would conclude as I am sure most reasonable people would conclude, that if we knew then what we know now, this event could never have arisen because the invitation would never have been extended.

The question then is, does the University have an interest in this proceeding by way of funds it may have received through these conduit organizations of which one of its leading lay trustees was an important director, sufficiently importantly mentioned in The New York Times only yesterday.

The last application that I refer to is one that is common to adminstrative proceedings and I don't know quite how we would resolve that one although I might have a recommendation to make, and that is the nature of the selection of the panel, the hearing officials by the charging institution. That is, this as I understand it, and I have been so advised according to the letters which have been sent out and that is the reasonable inference to be drawn by the letters sent to the students, that the University has commenced the complaint against the students.

This is not a complaint by individuals associated with the University but the University itself is the complaining party.

I think it is not quite proper for the University then to select the hearing officers, all of whom are either employees of the University or students at the University.

This is a problem that administrative agencies have felt for many, many years and the usual way it is solved and has been solved in the United States Government, is to have a separation, a complete administrative separation of the hearing and complaining and prosecutorial functions of such an administrative agency.

Now, I realize this panel itself cannot make the decision as to its own propriety since that decision was made for it by the President. I do raise the question that the manner of selecting the panel was improper and I accordingly ask that it would not be advisable to take the matter back to the President in this light and ask that a panel be selected in another way entirely, that is, outside the University itself, or, that the University withdraw the charges that have been made and if any individual in the University wishes to proceed to make such charges, then, of course, I would have no objection to a panel of this kind being assembled to hear them.

I do have objection to the panel in light of the manner in which we are proceeding.

Those are the motions I make at this time.

THE CHAIRMAN: With respect to the first two of your four applications, Mr. Rachlin, in which you ask Dean Truman and David Langson to disqualify themselves, I believe that this is the decision that each man must make for himself. They have been asked by President Kirk to serve on this advisory panel. I take it if either man feels that he is unable to participate in these hearings fairly, that he will excuse himself and I ask Dean Truman and David Langson if they wish to excuse themselves?

DEAN TRUMAN: Mr. Chairman, I would be glad to withdraw if the President requested me to. On the grounds you have expressed, I feel no need to.

THE CHAIRMAN: Mr. Langson?

MR. LANGSON: I would not withdraw.

THE CHAIRMAN: I think Mr. Rachlin, that

each man has to be a judge of his own conscience.

With respect to your fourth application that this panel should disqualify itself from participating at these hearings because of its manner of selection, we have been appointed by President Kirk to serve in this capacity to make recommendation. We have undertaken that assignment. We have expressed our intention to conduct these hearings fairly and as I indicated before, compassionately, and we intend to proceed with the hearings.

With respect to the third application, wherein you seek disclosure as to the University's interest in the activities of the CIA, certainly if in the course of your presentation it appears that the University has such an interest, that is a matter that I think the members of this panel might take into consideration. I don't think it is practicable to adjourn these hearings for the purpose of investigating the extent, if any, of the University's interest in the activities of the CIA. So I think with respect to each of your applications, we will have to say no and proceed with the hearings.

Prof. Jones, do you wish to proceed?

PROF. JONES: I would like to call the first witness for the University, Mr. Clark.

ALEXANDER CLARK, called as a witness, testified as follows:

EXAMINATION BY PROF. JONES:

Q Please state your full name and your position with the University?

A My name is Alexander Clark. I am the Director of the Office of University Placement and Career Planning.

Q Mr. Clark, how many employers avail themselves of the services of your office?

A During an academic year, approximately between 350 and 400.

Q Approximately how many interviews are arranged by your office--

A VOICE: My advisor has asked me whether the students involved should not have an opportunity to plead to the charges before the testimony is taken. Point of order.

THE CHAIRMAN: Who are you, sir?

DEAN FLANIGAN: I am Dean Flanigan representing John Cauman.

THE CHAIRMAN: Dean Flanigan would like

each student to have an opportunity to state a plea. I take it or perhaps I ought not to prejudge what the plea will be.

This is not a formal courtroom in the sense that indictment has been handed down and now pleas of guilty or not guilty is to be made.

I take it, and we have assumed, that each student here if he were asked to state a plea would plead that he is innocent of the charges being made against him. Am I wrong in thinking so, in thinking that with respect to Mr. Cauman, Dean Flanigan?

DEAN FLANIGAN: Mr. Cauman intends to plead he was not at the demonstration.

(Continued on page 26.)

THE CHAIRMAN: This would be consistent, Dean Flanigan, with a, if you will, plea of innocence and certainly the University will be put to the proof with the presence at the appearance of each of the students here before us today.

I am sorry, Mr. Clark, will you continue now?

BY MR. JONES:

Q Mr. Clark, during the course of an academic year, approximately how many interviews are arranged for these employers?

A In the neighborhood of, I would say, about anywhere from 1500 to perhaps 3000. It is very difficult to measure this. It varies tremendously from organization to organization and from year to year. It is within that general area, I would say.

Q What is the procedure by which an employer makes use of your facilities, the services of your office, how does he go about it?

A He writes us usually or his representative may come to our office and request that he be given a date or two during the year to interview students and we put him on the schedule according to his requirements if we can. Usually if he does this early enough there is usually no problem. He may be scheduled according to the amount of space we have and the time of the year that he wishes to come.

Q These interviews, then, are scheduled at the request and at the initiative of the employers, is that correct?

A Yes.

Q Does Columbia invite employers to come to the campus to make use of the services of your office?

A No.

Q What is the policy of your office with respect to employers seeking to use your services, do you select among them?

A It is usually on a first come first serve basis. The larger organizations that have been recruiting for many years will usually make their dates very early in the season, sometimes as much as a year in advance. Smaller organizations, new organizations, sometimes make their dates later in the season.

There are occasions when we can't accommodate them on a given date, but it is rare we can't take care of them some time during the season.

Q Are there any class of employers which your office refused to accommodate?

A I would say only those that might perhaps present to us a problem in ethics. (Laughter)

MR. JONES: Excuse me, Mr. Clark.

Mr. Chairman, if these demonstrations continue, I will be forced to move that the hearing room be cleared. It is quite obvious that a proper hearing cannot be conducted in the atmosphere that is present and I would regret having to do so because I think that is a matter that is of interest to the University Committee, but I will move the hearing room be cleared if these demonstrations continue.

BY MR. JONES:

Q Please continue, Mr. Clark.

A A problem in ethics which might make it difficult for us to schedule them. Since I have been at Columbia, we have not been presented with this kind of problem with one exception. There is a type of employer that we refer to in this business as a third party recruiter. This might be represented by an employment agency, a consulting firm who perhaps is representing several ogranizations.

Our policy and the policy of most offices like mine is not to schedule representatives of this sort.

The reason being that it really isn't necessary. We wish to deal directly with the employer himself rather than through an intermediary and this is the reason for not using a third party representative in these areas.

Q In the time that you have been at Columbia, you have been here since--

A April 1, 1963.

Q In the time you have been here at Columbia, has it been necessary to disqualify any employer except for these intermediaries?

A No.

Q How did the Central Intelligence Agency arrange for the interviews scheduled for the week of February 7th?

A Well, in the way I described. They came to me last year in fact when they were on campus and we set up these dates tentatively at the time and then confirmed them as firm when the University schedule was published, the dates.

Q What were the dates?

A The dates we established initially were November 15th, 16th, 17th and 18th of 1966 for one group of interviews and then a second group for February 7th, 8th, 9th, 10th of 1967.

Q Do you have any knowledge or information relating to the Central Intelligence Agency other than the fact that they request these interviews at the campus?

A Yes. We know the kinds of students they look for in terms of their training, degree level, disciplines. We also know the kinds of jobs into which they are going. In fact, they publish this information, make it available which is in turn made available to students. They are generally represented in these bulletins.

There is a folder in our library in our office which contains this informaiton and is open to any student or any member of the University who wishes to look at it and students will seek interviews with one of my staff to inquire into these details so the information is generally available.

Q Mr. Clark, what were the interviews that the Central Intelligence Agency had scheduled on Wednesday, February 8th?

A In terms of numbers?

Q The hours during which the interviews were to be held.

A This was from ten o'clock that morning until

5:30, actually until 6:00. The beginning of the final interview which was at 5:30 which would have ended at 6:00 that day.

Q Where were these interviews scheduled to take place?

A They were scheduled in Room 606, Dodge Hall.

Q Will you describe in your own words in chronological order as much as possible the events that transpired in and around Room 606 on February 8th?

A I am sorry, I am going to have to correct that. I was reading from the first day which took place. That was the 7th. The actual hours of interviews on the 8th were from 10:30 until 4:00 in Room 606.

A gentlemen from the CIA appeared, Mr. Harry Russell and Roger Fowler came to my office about nine o'clock and we set them up in the room, went through the details of the day, looked at the schedule and they got set.

We handed them their schedule with the attached resumes of each student that was on the schedule. This started off with a student at 10:30 who appeared, went into the office and was interviewed and left at the end of the interview at eleven o'clock.

By eleven o'clock, a group of students appeared on the 6th floor outside of Room 606, sat down on the floor and made it impossible for us to enter that room. One of my assistants, Miss Jean Ayres who is the co-ordinator of recruiting, the one that makes up these schedules, deals directly with the recruiters, asked to be allowed into the room to speak with them and was not allowed to pass into the room by students, individuals in front of the door--

MR. RACHLIN: Excuse me. I will interrupt and ask whether this testimony is appropriate or proper unless Dean Clark indicates that he saw this take place.

PROF. JONES: I believe this was the purport of my question and I will ask Mr. Clark in general terms not to testify to anything except that which he personally observed.

A I was there when this took place. I was there this entire day from roughly 8:30 in the morning until about 4:00 in the afternoon when I left the office for about an hour then returned.

In the interim I was there the entire time.

Q And you saw Miss Ayres ask to enter the room?

A Yes. I was in the hall at the time. Also, present at that time was Captain DeNisco, director of the

University security office who tried to assist her into the room and he too was not allowed to pass and so they removed themselves and did not make any further attempt to enter the room.

Q Excuse me, Mr. Clark. How many students were there in the hallway sitting down, approximately?

A I didn't count them at the time. I would say roughly in the neighborhood of between 12 or 15.

Q Proceed--

MR. LANGSON: Mr. Clark, one question. Was Mr. DeNisco there before this sit-in took place?

THE WITNESS: He came at about the same time as the students arrived.

MR. LANGSON: Had he been asked to come?

THE WITNESS: Not by me.

MR. LANGSON: And he arrived about the same time?

THE WITNESS: Yes.

A (Continuing) The students sat there, carried on various discussions among themselves, some of which I heard, some of which I did not. I didn't actually listen directly to this conversation. It was a rather mixed kind of conversation with many people talking. I had to go into my own office from time to time during this period for a few minutes to answer the phone, but I spent the major portion of the morning in the hall outside of Room 606.

Q Mr. Clark, were further efforts made to enter the room?

A Yes. At 11 o'clock, another student appeared which was on the schedule to see these representatives and I took him to the door of the room and asked to pass into the room with him and we were not allowed to do so.

Q When you say you were not allowed to do so, what do you mean?

A The door was physically blocked by students sitting right in front of it.

Q In order to enter the room, would it have been necessary to step on one of the students?

A If not on, certainly--rather around or over. It would have been a difficult maneuver at best.

DEAN SULLIVAN: Was there any physical or vocal remonstrance on the part of students blocking the door?

THE WITNESS: Not particularly. There were comments of various kinds.

DEAN SULLIVAN: There was no physical attempt by a student other than just blocking--

THE WITNESS: Other than the fact they were just there and we didn't want to step on them. We simply asked could we pass through and they said no, so we didn't make any further attempt to go in.

A (Continuing) This proceeded throughout the day.

The next student appeared at 11:30. We went through the same procedure.

The next interview was scheduled at 1:30, the same procedure.

The next one at 2 o'clock, the same procedure.

Another one at 3:00, the same procedure, and the final one scheduled for the day at 3:30 and each of these times we were not allowed to pass when we asked if we might pass into the room.

We made no effort to force our way in.

PROF. WARNER: Do I understand during this period no one entered and no one left the room?

THE WITNESS: That is correct. The door was closed and it never opened during this period.

DEAN SULLIVAN: There were only the two

representatives of the CIA?

THE WITNESS: That's right, except for this first student that went in before this all took place and he went in and came out. That was prior to 11 o'clock, but after 11 o'clock up until 3:30 no one entered the room or came out of it and I was there during this period and should anyone have done so, I would have seen it.

Q Does your statement, Mr. Clark, include members of thegroup who were sitting in around the group? Did any of them enter the room?

A No.

Q When you were there?

A No.

Q During the time the sit-in took place, did other officials of the University appear at the seen?

A Yes. The Proctor of the University, Mr. Kahn was there for most of this same period. He did leave on one or two occasions for brief periods, but did return.

Also Captain DeNisco was there for this period. For a few minutes, each of the three of us stepped into my office which is right across from this 606 and I had ordered some sandwiches brought up and we had sandwiches in my office, but we could still observe this situation from there except perhaps for a minute or two in the process of going in and out of my office.

During this entire period, one of the three of us was on the floor opposite the room, 606.

PROF. WARNER: Was no food passed into the room?

THE WITNESS: No. I requested this, but it was denied.

Q Mr.Clark, were any comments addressed to the students who were sitting in the corridor by you or by any of the other University officials?

A Yes. I spoke with them, of course, in the process of this trying to allow the scheduled students to enter. Also during the morning Dean Alexander and Dean De Koff of Columbia College appeared and spoke with the students and asked them to leave.

They refused to do so. They were also asked by these two officials to identify themsleves which they also refused.

(Continued on page 37.)

The Dean of the School of General Studies appeared briefly in the morning. I do not think he addressed the students as Dean Alexander and Dean DeKoff did, speaking with the students and always telling them of the fact they were in violation of the University rules in blocking the door and were subject to possible disciplinary action as a result.

One of the students was recognized by Dean Alexander and asked to report to Dean Alexander's office when this finally ended.

Q Did the Proctor address any comments to the students?

A He did, although I don't recall precisely what he said. He spoke with him from time to time, but I don't recall precisely what it was.

Q Capt. DeNisco?

A I don't actually recall his speaking to them. My impression was that he did, but I can't actually say he did.

Q Were there discussions with the students concerned with the question of terminating the sit-in?

A Among the students?

Q No. Between the officials of the University and the students. I gather the two CIA agents were no longer in Room 606. How did the matter conclude?

A Finally, at the end, yes, at the very end I told them that there were no more students scheduled for the day; that there would be no more interviews under any circumstances and it would seem logical there was no more point really to sit around, and could we now allow the CIA representatives to leave?

There was a discussion among the students about this and finally they agreed that if one of them went into the room along with me and that a statement be signed to this effect--in other words, that there would be no more interviews today and we added the date to that and finally I and the student were admitted to the room and one of the representatives of the CIA, a Mr. Harry Russell--the other gentleman was Mr. Roger Fowler.

Mr. Russell was asked if he would sign the statement that there would be no more interviews by them today, and he agreed to do so and signed it.

Then the student asked if there could be a signature by a University official and I also agreed and did sign this statement, also because this was the fact and this ended the procedure for the day and the students left at this point.

Q Had there been earlier or different demands on the part of the students with respect to letters or statements or concessions by the University?

A Well, there had been meetings on the campus--

Q I mean this day in the hall.

A This day?

Q Yes.

A None other than those I have reported. I don't believe I have omitted anything that would be pertinent.

Q No demands were made specifically of action upon the president of the University?

A I believe you are correct that in this statement this was mentioned at one point.

THE CHAIRMAN: What statement?

THE WITNESS: There will be no further interviews today, the paper that I signed and Mr. Russell signed.

A (continuing) --I believe someone suggested this be signed by the President of the University and I suggested that this didn't really seem necessary, and they finally agreed that this was so. And of course we went on as I described it and Mr. Russell and myself signed it and that ended the affair for the day.

Q One point bearing on the general function of your office. Would you give us some examples of other government agencies that you have provided these services for?

A There are a great many. The ones--the larger ones, the National Security Agency is usually there each year; the Bureau of the Budget, the Atomic Energy Commission; various units of the Department of Defense; Health, Education and Welfare, to name some.

Q Does the Peace Corps interview?

A The Peace Corps does rather elaborately and they spend a whole week on campus.

Q Does the group called Vista, Volunteers In Service To America, do they also interview?

A Yes.

Q The Office of Economic Opportunity, do they interview?

A Yes.

PROF. JONES: The final question I would like to ask, Mr. Clark, relates to the identification of the students. I would like to have each of the students charged stand, give Mr. Clark an opportunity to state whether he recognizes the student as one of those who participated in the sit-in during the period described on February 8th?

MR. RACHLIN: If I may be heard on that, I would oppose any such procedure. I think the proper way to proceed is to have Mr. Clark demonstrate the students from amongst the audience. Let's see if he does know who they are and if he spent as much time as he said he did in observing them. I am sure Prof. Jones knows very well about the procedure.

THE CHAIRMAN: Mr. Clark, are you able to identify any of the persons present here this afternoon as being students who were present in front of Room 606, Dodge Hall on February 8, 1967?

THE WITNESS: I suspect I might, if I were given sufficient time. I see a great many students. I don't know them all intimately and I am not sure I would even know their names. I would certainly attempt it.

PROF. JONES: Could we proceed in this manner, Mr. Chairman: Could we have Mr. Clark point out individuals which he remembers as being at the incident and have them stand up as they are so pointed out, then have them identified subsequently for the record.

MR. RACHLIN: No objection to that.

PROF. JONES: Mr. Clark, would you proceed, please?

THE WITNESS: I might add this: The University of the size that we have and the number of students that I see during a day or a week or a month--and, incidentally, I do not, as the head of the office, spend very much time interviewing individual students--I recognize people, of course.

THE CHAIRMAN: All that we are asking of you, Mr. Clark, is that you call upon your memory, as best you can, and indicate whether there is anyone here you remember from the events of February 8th.

THE WITNESS: I see one that I am reasonably sure was there and this gentleman right here with the glasses.

PROF. JONES: Would you please stand?

VOICE: I would like to save Mr. Clark the trouble. I am not trying to hide at all that I was there during the sit-in.

THE CHAIRMAN: What is your name?

VOICE: Robert Peter Bobrick.

MR. RACHLIN: If the other students who were there, in light of what Mr. Bobrick said, if the other students want to stand, they may stand up.

PROF. JONES: This, I think, will expedite the proceedings in several ways, because I think there are some students who claim not to have been there.

THE CHAIRMAN: Will those who are standing please identify yourselves and, for the record, each of the students who is standing is doing so for the purpose of indicating not his sympathy with the events of February 8, 1967, but, rather, his presence in front of Room 606, Dodge Hall on February 8, 1967.

Mr. Bobrick, you are Robert Peter?

MR. BOBRICK: That is correct.

VOICE: Richard Fioravanti.

VOICE: John Sinizi.

DEAN SULLIVAN: What is your name?

MR. SINIZI: John Sinizi.

THE CHAIRMAN: Won't you sit down?

MR. SINIZI: I was there.

THE CHAIRMAN: We may have to convene a separate procedure or separate set of hearings, Mr. Sinizi to consider your matter, but presently you are not one of the students who received a letter notifying you of the charges.

MR. SINIZI: It is not my fault.

THE CHAIRMAN: Your name?

VOICE: My name is Michael Melzer.

VOICE: Susan Kaplow.

VOICE: George Gruenthal.

VOICE: Roger Taus.

VOICE: Anthony Papert.

VOICE: John Jacobs.

VOICE: Robert Dillon. I would like to say I resent the implication that there are some of those who wish to be disassociated with the group. I know this to be not true.

THE CHAIRMAN: Yes, sir.

VOICE: James Newton.

VOICE: Edward Spannaus.

VOICE: Benson Bobrick.

VOICE: Richard Sober.

VOICE: Paul Gallagher.

THE CHAIRMAN: Who is no longer in the school.

Is that everyone? Won't you sit down, please?

MR. RACHLIN: I would like to ask Prof. Jones is it the contention of the University there were others present? Because if the University agrees there were not, perhaps we can dispose of some matters right here and now.

PROF. JONES: There is a good possibility some of the students named in this list were not present. However, my pencil didn't move as fast as Prof. Berger's eyes and I am not sure I have gotten down all the names.

I gather Mr. Cauman is one who states he was not present?

MR. RACHLIN: There were at least three.

PROF. JONES: That is my understanding.

MR. RACHLIN: I will give you the names of two others. Mr. McCann and Mr. Steinbauer. And the reason I asked the question: at this point I think I am entitled to a ruling from the panel on the question, regardless of sympathy, and since we know many of the students identified themselves with the activity whether they were or were not present, I would like a ruling from the panel as to the question as to whether the panel will proceed against those who are not present.

THE CHAIRMAN: I indicated earlier, Mr. Rachlin, that we expect we will require of the University to establish that each of the 19 students against whom charges are being brought was, in fact, present at the occurrence on February 8th. And if there are students against whom charges have been brought who were not present, the charges against them will be dismissed.

MR. RACHLIN: May I ask the next question? Has Prof. Jones finished with Mr. Clark?

PROF. JONES: The last thing I asked Mr. Clark was this question of identification. I have no further questions.

MR. RACHLIN: Shall I proceed?

THE CHAIRMAN: Mr. Rachlin.

EXAMINATION BY MR. RACHLIN:

Q Mr. Clark, you observed the students who stood just a moment ago?

A Yes.

Q Are you able to observe any persons in this room who you would say were present that did not stand?

A I would hesitate to do so.

Q Can I take it for the record that your answer is no, that there were no students--

A I cannot say yes or no. I can't identify them, no.

Q You were there--the students arrived at what time?

A In the morning?

Q Yes.

A They first arrived at approximately 11:00 o'clock.

Q And you said, I think, in a question from Prof. Jones, you were there almost continuously until approximately 4:00 o'clock.

A That is correct.

Q I think you said there were somewhere between 12 and 15, if my memory is right.

A Initially.

Q Did more arrive?

A Yes.

Q How many more?

A I didn't count them.

Q As many as five or six?

A Yes, I think perhaps.

Q Then you would say there were 20 students there?

A Approximately.

Q Of the students who stood a moment ago, can you identify any of those as having been there originally and how many of those can you identify as having come later?

A I wouldn't attempt to do this because I wasn't observing the comings and goings of individuals at all times of the day.

Q How many of the students left that came originally?

A Sir, I don't believe any did.

Q So that you say at some point there were 20 there?

A At one time, I believe there were that many.

Q What time of the day would you say there were 20 there?

A At the end of the day when this finished, at around 3:30, quarter to 4:00, somewhere in there.

Q Did you count the number of students that just stood?

A No.

Q I will ask you at this moment, then, to stand and look through the audience very carefully and tell us which student was there who did not stand a moment ago.

MR. RACHLIN: Will the students who stood a moment ago,please stand again?

A Students might have come during the day--

Q Who participated at any time of the day in this activity.

A I don't see any that I recognize, but on the other hand, I wouldn't swear to it.

Q Mr. Clark, at what time was the door locked from the inside; do you recall offhand?

PROF. JONES: Objection. I don't believe that Mr. Clark testified the door was locked from the inside.

MR. RACHLIN: I am afraid this is cross-examination, Prof. Jones. I have a right, because the door, as Mr. Clark will testify, was locked.

THE WITNESS: I didn't testify to that.

BY MR. RACHLIN:

Q The door was locked, was it, Mr. Clark?

A I don't know.

Q Weren't you there when Capt. DeNisco tried the door and it was locked?

A At one time or another, this was true.

(Laughter)

Q At what time was it that Capt. DeNisco tried the door and found it locked?

A The first time?

Q The first time.

A This was at approximately 11:00 o'clock or thereabouts when he and Miss Ayres asked to go in the door. As far as I know, he didn't try the door at all.

Q He knew it was locked?

A I don't know.

Q When I asked you, you said he tried it.

A I didn't say that.

Q It was your information to me that the door was locked at 11:00 o'clock.

A I didn't say anything about the door being locked, I don't believe.

Q I guess there is some confusion as to what you said then. You knew at some point during the day, at least, that the door was locked, didn't you?

A No, I said I didn't know.

Q At any point during the day, and you didn't see Capt. DeNisco try the door?

A No.

Q You didn't see him step on Mr. Newton, for example, and go up to the door and try the doorknob?

A No.

Q Did you go into the room at the end of the day?

A Yes.

Q Didn't the door have to be opened from the inside in order to get into the room?

A It was opened from the inside, yes.

Q Someone from the inside opened it?

A Yes.

Q Is there a way of locking the door from the inside?

A Yes.

Q When you got in at that time, which was around 4:00 o'clock, the door was unlatched from the inside, is that correct?

A Yes.

Q So we know it was locked, at least, at 4:00 o'clock?

A No.

Q We don't know it?

A No. It was closed, but I don't know whether it was locked or not.

Q Didn't I just ask you a moment ago, and you answered to the very question I asked you, it was unlatched by someone from the inside?

A Yes. The knob was turned. Perhaps we are missing our definition of locked and unlatched.

Q Perhaps we are. How does the door lock from theinside?

A I am not certain. I would have to look at it.

Q Was it with a key or some kind of a knob?

A I am not sure.

Q I take it you are saying, then, you don't know whether the door was locked or not, is that your testimony?

A That is correct.

Q Not that it was locked or open, but you don't know one way or the other?

A The door was closed, but I don't know whether the door was locked or not.

Q At one point Capt. DeNisco tried the door, didn't he?

A I don't know.

Q Weren't you there when he and Miss Ayres went up--and I will not characterize your testimony--when they went up to the group that was sitting and didn't Capt. DeNisco try the door?

A I don't know. He asked to go in. I don't know whether he actually tried the door or not.

Q When Capt. DeNisco at that moment at 11:00 o'clock--how far away from him were you standing?

A About six to eight feet.

Q Were you behind him or off to the side?

A Slightly to the side.

Q Couldn't you see whether he tried the door or not?

A I could have, if I were looking at that particular item at the moment. I don't recall whether I was or wasn't.

Q When Capt. DeNisco presented himself, did any student use their hands upon him?

A Not to my knowledge.

Q So that no one, except for the configuration on the floor,no one used any force against him; is that right?

A Not to my knowledge, no.

Q During the time they were there, there wasn't, as I think you testified in reply to a question from Prof. Jones, no unusual noises or disturbances in that manner?

A No.

Q And there were no comments made which might be considered of a disorderly nature, except for the presence of the students there; is that correct?

A That is correct.

Q With regard to your office, do you have a written set of policies concerning the use by employers of the institution's facilities, such as happened on February 8th? Is there a written set of policies as to who may or may not use the facilities of the University?

A The only statement that I have seen of that nature is the one that was printed as a result of President Kirk's statement to this effect.

Q That was with regard particularly to this organization?

A And that statement was approximately what?

A That the University does not make a valued judgment as to who does or does not interview students or who can or cannot interview students on the Columbia campus.

Q Would that mean, then, with the exception of these third-party groups you were talking about, that any employer who sought the opportunity would be permitted?

A No.

Q Can you indicate to us, then, the kinds of organizations or employers who would not be permitted to use the facilities of the University?

A I can give you an idea what one might look like. I haven't had this experience at Columbia. I have had this experience in another institution in a similar nature, an organization that sought to interview.

I held a similar position at Harvard at one time and this was a life insurance agent for one of the major life insurance companies who came to see me about making a date for interviews and so on.

We got into a discussion as to what kinds of students he wished to see, at what degree level and so on, et cetera, et cetera, until the very end he said "There is one more qualification that I would like and that is that whoever signs up to talk with me must come in with one hundred names." In this particular case I barred him from interview.

Q Suppose a political organization asked for the opportunity to seek Columbia students to work for them. Would that be permissible

A Yes.

Q And there would be no restrictions on the kinds of political organizations involved?

A No, I don't believe so.

Q Regardless of its affiliation or its point of view or its political position?

A I can't think of one offhand. It is possible, I suppose, I might have a question, in which case I would go to my superiors and discuss it.

Q You said in the years that you have been here, no employer had been refused. Did I understand you correctly?

A That is correct.

Q Do you know from your records prior to your appearance at Columbia in this capacity there were any employers or organizations that had been denied the right to solicit students for employment?

A I don't believe they have ever been barred from what I can determine.

Q With regard to this particular organization, at the time the decision was made to permit them to solicit, and I gather they came to you in person--is that the correct way or did they write you a letter?

A Who are you speaking about now, the CIA?

Q Yes. Isn't that who we are concerned with today?

A I don't actually know in this particular instance. It varies from year to year. I suspect it was in person in this case. I would have to check--Miss Ayres who handles this--

Q Did they come to you first or did they go to someone else in the University and then were delivered to you?

A They usually go to Miss Ayres, if they have been here in the past, because that is her job.

Q When was the time they were here prior to November 1966?

A They were here the previous year.

Q About a year ago?

A Roughly, yes. February 1966, a few weeks later than this year.

(continued on page 57)

Q In or around that time, or at any time since they were last here or even perhaps shortly before that period, had you heard of the relations of the CIA with Michigan State University?

A Yes.

Q And you knew, then, I take it, that one of the charges against the CIA at that time was that they were taking students and using them in a third party employment relationship, isn't that true?

A No. I don't quite understand what you mean by that.

Q Wasn't one of the charges made against them in regard to Michigan State that they employed students but placed them in a Michigan State project in Vietnam; isn't that what happened?

A No, not as I understood it.

Q Had you read the story, for example, in Ramparts Magazine about that?

A No.

Q Then you are not certain whether that was one of the charges or not?

A As far as I understand it, they weren't students, they were faculty.

Q They employed faculty and placed them in the

Michigan State--

A As I understood it, yes.

Q Isn't that employing a third party relationship that you indicated violated your rules?

A They weren't violating my rules.

Q You said that Columbia would not permit a third party employer into the institution to solicit students, isn't that right?

A That is correct.

Q Isn't this relationship you have just described with members of the faculty just such a relationship?

A No, I don't believe so.

Q Well, if they were working in another--under the guise of another project as part of a Michigan State project in Vietnam, wouldn't that be that kind of relationship you are talking about? They wouldn't be working for the CIA at that time, or would they?

A I think they would be working for the CIA as far as I could determine.

Q Then I take it you don't think it is wrong or or violating University rules, for the CIA to employ Columbia students or faculty and pay them, but place them in a Columbia University project under the guise they would be working for Columbia some place in the world; you would think that would not violate the Columbia University rules, that Columbia would be a cover for activities of another organization?

PROF: JONES: Mr. Chairman, I think this line of questioning is based on facts which haven't been shown to exist. I have no objection to his questioning Mr. Clark about what he knows, but I am not sure that it is helpful to postulate hypothetical examples and ask Mr. Clark to testify as to what he would do in those circumstances when at least as far as Columbia is concerned, there has been no foundation laid for the questions that have been posed.

MR. RACHLIN: I will proceed without arguing the point with Prof. Jones. I will proceed to the next question.

BY MR. RACHLIN:

Q After you read or heard about this Michigan State matter relationship with the CIA, did you before you permitted the CIA back on the Columbia campus, inquire or make any investigation as to what the CIA would do with Columbia students or faculty?

A I do that with all employers by talking with their representatives, reading the literature they send me and their correspondence and so on.

Q Did you specifically discuss the question of Michigan State with any representative of the CIA?

A No.

Q So that you were not able to, I take it, verify from them, at least, some of the charges that had been made against them, is that correct?

A I didn't attempt to.

Q Let me ask you this question:

MR. RACHLIN: This Prof. Jones might find hypothetical, but he will object if he thinks so.

Q Knowing what we know now from yesterday's papers and today's papers, every day these past ten days or so, would you permit the CIA to appear on this campus?

A Yes.

Q Now, what was the name of the student who was not allowed into the room at 11:30 to use the term I think that you expressed?

A That was Harry Rosenthal. He is a candidate for a PHD degree in history.

Q He came into your room at about 11:30, is that correct, Mr. Clark? Your room is across the hall from 606?

A Yes.

Q You are in 607 or whatever the number is, it isn't important. It is almost directly opposite from 606?

A 605, yes.

Q He appeared first in your room, didn't he?

A Somewhere in that area.

Q And you talked with him?

A Yes.

Q Obviously you discussed the question, the problem that was going on at that very moment?

A Right.

Q Did you hear him speak to any of the people in the group that were around the room to ask him or did he himself ask them to let him in?

A No, I did that.

Q Did you go up to the group?

A Yes.

Q What did you say?

A I said "I have a student who has an appointment with these representatives and we would like to enter the room. May we do so?" I received an answer "No."

Q Do you know who gave you that answer?

A Not precisely, no.

Q The next appointment was at 1:30?

A The next appointment was at 11:30.

Q That was the 11 o'clock appointment, Rosenthal?

A Yes.

Q Who was the 11:30 appointment?

A A gentleman by the name of Michael Freidman.

Q What happened to him?

A The same procedure.

Q He was not allowed into the room?

A No.

Q What was the appointment after that?

A 1:30.

Q Who was that with?

A Frederick Stewart.

Q What college is Frederick Stewart in?

A He is a candidate for the MBA degree in finance.

Q What happened to him?

A Same procedure.

Q You and he walked up to the room and asked for permission to go through and it was denied you, is that correct?

A That is correct.

Q That was 2 o'clock or 1:30?

A 1:30.

Q Who was at 2 o'clock?

A Urial Dom.

Q Can you spell that for us?

A D-o-m.

Urial, I believe.

Q What college is that?

A He is a PHD candidate in mathematical statistics.

Q I take it there was no 2:30?

A There was no 2:30.

Q You went up with Mr. Dom to the line and you were not permitted to go through?

A Right.

Q At 3 o'clock?

A At 3 o'clock Matthew Kehse, I believe.

Q What college is Mr. Kehse?

A He is a bachelor degree candidate in industrial engineering.

Q And you said the final appointment was at 3:30 of the day?

A Yes.

Q Who was that?

A Edmund Cohen.

Q C-o-h-e-n?

A C-o-h-e-n, right.

Q What college is he with?

A He is a PHD candidate in industrial relations.

Q Did you in any way participate, and if the answer is no, please say so, in the decision that was made back in November 1966 after the appearance of the CIA in the decision to permit them to return in February?

A February of this year?

Q I will go back. Do you recall that after the CIA was here in November, as you described, you will recall, I assume, the president had a meeting with a large number of students on this issue?

A Right.

Q Did you in any way participate in the decision to permit the CIA to come back again in February?

A Only to the extent it was already established at that point.

Q In other words, you were told it, I take it, "We'lllet them come back," or whatever the phrase was?

A I was told to let them come back.

Q You weren't asked your advice whether you should or should not?

A No.

Q At any time to your knowledge did the CIA agents attempt to leave the room prior to whever it was, 4 o'clock?

A I haven't the slightest idea.

Q In other words, they didn't convey any message to you?

A No.

Q Is there a telephone in that room?

A No.

Q And there was no banging on the door indicating they wanted to leave?

A No.

Q Was this the first employer to your knowledge since you have been at Columbia, that involved this kind of an activity? This never happened with other employers?

A No.

Q No matter whether they were big corporations or government agencies or small corporations or whatever?

A No.

Q This is the one and only time to your knowledge?

A Yes.

MR. RACHLIN: Thank you.

THE CHAIRMAN: Dean Truman?

DEAN TRUMAN: No.

THE CHAIRMAN: Dean Sullivan?

DEAN SULLIVAN: No.

MR. LANGSON: I have a couple.

After the activities in November when there was some difficulty, did you feel beforehand that there might be some trouble, that there might be some difficulty when the CIA people came back in February?

THE WITNESS: Yes.

MR. LANGSON: What type of trouble did you think might happen?

THE WITNESS: There are all sorts of thoughts. I thought what actually happened might happen, among others.

MR. LANGSON: Earlier you brought up the consideration which might lead to barring a group from this campus to recruit and I think you used the word "ethical consideration"; in your observations would you say--it is a two-fold question. One is, do you in any consideration, see that there may be some ethical problems related to CIA?

THE WITNESS: From my own personal point of view?

MR. LANGSON: In your role as director of placement?

THE WITNESS: No, I don't believe so.

MR. LANGSON: You saw no ethical problems?

THE WITNESS: No.

MR. LANGSON: Did you feel before the people came that there might be others on this campus who might feel that there were ethical considerations?

THE WITNESS: Yes.

THE CHAIRMAN: Mr. Ment?

MR. MENT: I have no questions.

THE CHAIRMAN: Prof. Warner?

PROF. WARNER: No questions.

THE CHAIRMAN: Mr. Clark, with respect to the interviews of November 16th, 17th and 18th, 1966, were there any unusual events taking place then?

THE WITNESS: Yes, there was a picketing in front of the college walk entrance to Dodge Hall.

THE CHAIRMAN: On all three days?

THE WITNESS: No, just the first day. During the lunch hour. Mr. Russel had been with us that day. This was his first day of that particular visit. He had seen four students during the morning. I took him to lunch at the conclusion of his morning interviews at the Faculty Club and received a call that picketing was going on while I was there and I returned and saw that this was the case and asked Mr. Russell to go up to my office and I went in the college walk entrance, confirmed that picketing was taking place.

Mr. Kahn was there. Captain DeNisco. I went back up to my office and discussed this with Mr. Russell and he said he would not continue interviews that day which were scheduled for the afternoon and for following days, for that matter.

THE CHAIRMAN: So the interviews scheduled for the afternoon of November 16th and for the days of November 17th and 18th were canceled?

THE WITNESS: On campus, yes.

THE CHAIRMAN: Let me pursue this. Between November 18, 1966 and February 8, 1967, were any requests made of you that the interviews scheduled for February 8, 1967 not be conducted?

THE WITNESS: No.

THE CHAIRMAN: During the day of February 8, 1967 from 11 o'clock or so in the morning when the students arrived until the late afternoon when the truce was negotiated, were you in voice contact at any time with the CIA representatives inside Room 606?

THE WITNESS: No.

THE CHAIRMAN: With respect to the discussions with the students, was there any student who appeared to be the spokesman for the balance of the students?

THE WITNESS: Yes.

THE CHAIRMAN: Can you identify him?

THE WITNESS: Yes, Mr. Dillon.

THE CHAIRMAN: Was it Mr. Dillon who signed the agreement on behalf of the students?

THE WITNESS: Yes.

THE CHAIRMAN: Were there any other students who acted as co-spokesman with Mr. Dillon insofar as you were able to determine?

THE WITNESS: Not really. I wouldn't say, no.

MR. MENT: You mentioned that the CIA had told you what kind of jobs these students were being interviewed for?

THE WITNESS: Yes, in general.

MR. MENT: Can you tell us?

THE WITNESS: They provide us with this information which is in my files and I can either read it to you or pass it to you. There is quite a large supply of information here.

The first sheet is in the field of economic research looking for Bachelor, Master, PHD candidates in economics, economic history, et cetera, positions located in Washington.

They are looking for a good academic record obviously as everybody is. Area knowledge and competence, adequate for research. This goes on to indicate economic geography, area studies, international trade and business administration, work assignments involving the measurements of aggragative economic performance or detailed research on various sectors of foreign economies, that is, major industries, transportation, communications, agriculture, international trade, finance and so on.

Then it goes into salary figures and employee benefits, et cetera.

Another one has to do with the field of accounting and auditing positions, BA and MA candidates in accounting, contract auditing, internal auditing. Accounting involves preparation of original records, preparation and analysis of financial statements and reports and accounting systems design, installation and review, contract auditing, auditing contract costs and cost estimates. Internal auditing, reviewing administrative, financial and property procedures and verifying compliance, determining adequacy of internal controls and auditing financial and property records.

Then again the salary and benefits, et cetera.

Geographic research in cartography positions. BA, MA, PHD candidates in geography and cartography. Geographic research, research analysis and preparation of reports concerned primarily with the physical and cultural aspects of areas, regions and countries throughout the world.

Work assignments are problem oriented and involve detailed investigation of the elements of the character of areas. Cartography, research and compilation of data on a regional basis leading to the design and preparation of special subject maps. Postions are located in Washington, D. C.

Again, the other details.

Engineers, scientists. Degrees in astrophysics, celestial mechanics, electronics engineering, and nautical engineering, aerospace engineering, nuclear engineering, physics, nuclear physics and mathematics. Work entails the analysis of data and preparation of reports on foreign devices, equipment and systems.

Individuals will be concerned with foreign scientific and technical research and development characteristics and performance capabilities in selected areas of fundamental and applied science.

Military economic research positions. Bachelor, Master, PHD candidates in economics, history, military history and policy, political science, Russian area studies, Chinese area studies, operations analysis, mathematics, statistics and business administration.

Applicants are employed for these positions will have the opportunity to specialize in research on the economic aspects of military affairs and military programs of other countries.

Research assignments generally are not

confined to the applicants academic field of concentration. Individuals trained in one or a combination of the disciplines listed are most likely to possess the skills necessary for research, analysis and the preparation of military economic reports and to find the work challenging and stimulating.

Much of their training will be applicable directly or indirectly to a career in military economic intelligence research.

Location, Washington, D. C.

Current intelligence and research positions. Bachelor, Master, PHD degrees in international relations, political science, history, sociology, and anthropology, journalism, economics and area studies. General description of duties to identify, assess and report to the top policy level of the government on events in foreign countries having a bearing on the security of the United States.

This requires sensitivity to developing trends and the ability to synthesize political, economic and military intelligence regarding the stability, intentions and capabilities of foreign governments. The ability to write clearly and succinctly is critical as is the ability to present ideas verbally in a clear and brief manner.

Some positions involve research in depth and the preparation of studies concerned primarily with political and sociological dynamics. Postions are located in Washington, D. C.

MR. MENT: I gather then there is no indication in that whether such students would be working with a cover organization or even a covering university as in the Michigan State case brought up earlier?

THE WITNESS: No.

PROF. WARNER: Mr. Clark, I believe you stated that the organization maintains an office in New York?

THE WITNESS: Yes.

PROF. WARNER: Where was that office?

THE WITNESS: I believe it is somewhere around--I have never been there. It is on 41st Street. I am not sure I have the address here.

PROF. WARNER: Is this office that they maintain a recruiting office?

THE WITNESS: Not specifically, no.

PROF. WARNER: With respect to these two

representatives were they from this office or the Washington office?

THE WITNESS: Mr. Russell comes from Brockton, Massachusetts, where he lives. He spends most of his time recruiting so he doesn't actually work in an office because he is out on campuses most of his time. He does work at home.

Mr. Fowler is from the Washington office.

PROF. WARNER: Thank you.

THE CHAIRMAN: Mr. Clark, when the interviews--were there interviews conducted on February 7, 1967, the day before the demonstration?

THE WITNESS: Yes.

THE CHAIRMAN: Were those interviews uneventful?

THE WITNESS: In what sense? They took place from 10 in the morning until 6 in the evening. No problem.

THE CHAIRMAN: Was there any picketing that you were aware of on February 7th?

THE WITNESS: Not to my knowledge, no.

THE CHAIRMAN: If a request had been made of you prior to February 7th from a group of students asking that the scheduled interviews not take place, what would your reply have been?

THE WITNESS: I would have said, probably, as I have said to others who have asked this question, that I would not cancel, that I did not feel that any of us, including myself, had the right to decide which employers a student might talk with and which employers he might not.

I have a policy in my office that this is a decision of the students and no one else's, including my staff.

In other words, if our discussions with students, they do come to us with information and so on.

THE CHAIRMAN: This would not be the case if you yourself had ethical doubts or doubts about the ethics of the prospective employer, isn't that so?

THE WITNESS: Yes. In that case they probably wouldn't be scheduled at all.

THE CHAIRMAN: If a group of students were to come to you prior to the scheduledinterviews and were to raise possible ethical considerations, would you consider them?

THE WITNESS: Certainly. In fact I was a

little surprised they didn't. I thought they were going to but they didn't.

PROF. JONES: I have no further questions.

A VOICE: On behalf of my client--

THE CHAIRMAN: I think each of the men who are advising students not represented by Mr. Rachlin definitely have an opportunity to examine Mr. Clark. Do you want to come forward, sir?

MR. GREENMAN: Thank you. I would like to clear up a couple of points of detail.

Firstly, is it a correct inference--

THE CHAIRMAN: You are Prof. Greenman?

MR. GREENMAN: Instructor, sir.

THE CHAIRMAN: Consider yourself promoted.

MR. GREENMAN: Is it a correct inference from your testimony to assume then that in general in the past and in the early part of this incident that your relations with the CIA as an employer were normal as they would be with any other employer either governmental or private?

THE WITNESS: Yes.

(Continued on page 78.)

MR. GREENMAN: In response to Mr. Jones' earlier questions, I believe he asked you how the February 8th interview arose and that your answer to that question was that you were contacted either by letter or by voice, you weren't quite sure, some time about a year or six months ago; is that correct?

THE WITNESS: Usually with organizations like this that come year after year, they will usually make a tentative date before they leave for the following year simply because they are here and we can discuss it.

Then when the University calendar is firmed up, then we write them and confirm this date.

Occasionally we may have to adjust it, but usually we know approximately when vacations are and holidays so we don't schedule on those days.

MR. GREENMAN: Were the two separate sets of dates, the November 15th sequence and the February 7th or 8th sequence decided upon simultaneously?

THE WITNESS: I don't really know. In this case it varies. Sometimes they are and sometimes they aren't.

MR. GREENMAN: Do you recall, for instance, whether it was a normal procedure to have two separate interviewing times?

THE WITNESS: This is very normal. The reason we do this, we use the period November-December generally for Ph.D recruiting simply because there are many here at Columbia and we found it easier and it has become more traditional in this business to do it at that time of year and we reserve February, March into April for Bachelor Master people.

In this case it was mixed.

MR. GREENMAN: IN the case of the students who were unable to see the CIA but who had been scheduled to in the November appointments, were interviews arranged for them at a later time?

THE WITNESS: They were given the opportunity to do this themselves. When they came in and found that the representatives were not there, we were asked to give them a phone number which was the number of the New York office and Mr. Russell was there and sets up interviews with them in the New York office.

MR. GREENMAN: Could you say offhand if

any so responded?

THE WITNESS: Yes, they did. I don't have that list with me.

MR. GREENMAN: So those that were to be interviewed in February, were those that were originally scheduled for that from a long time back?

THE WITNESS: No, that was a different list,as far as I could determine. I would have to check this against each other to make sure. I believe they are quite separate groups.

MR. GREENMAN: So in fact one group was interviewed off campus from November; is that correct, sir, and that another group was interviewed on February 7th, but without any disturbance because this was not public knowledge?

Could you confirm that?

THE WITNESS: Let me see if I am correct on this.

In November on the first day of interviews, the first four interviews in the morning went off on campus without any problem. When we were notified that there was picketing taking place, I told Mr. Russell about this and he went up to my office on the 6th floor and talked with his superiors to ask what to do.

He was told to stop. In other words, he made that decision, I did not.

Then he gave me his phone number and said anybody that comes in from now on that has been scheduled, have him call me and we will set up a meeting in the New York office.

MR. GREENMAN: May I ask a question which may be considered hypothetical? In your opinion as director, would it have been possible to arrange the February interviews in a discreet way or off campus so this incident would not have taken place?

THE WITNESS: It could have been done, certainly.

MR. GREENMAN: I assume so. At what point and by whom, if you have this knowledge, sir, that the decision was made to hold it publicly and on campus?

THE WITNESS: The decision had already been made at that time. The date had been made months before and it is publicized just as all interviews are publicized on bulletin boards and so on and lists are made out available to students as to when various employers are coming and what sort of people they look for in terms of degrees and so on.

MR. GREENMAN: Were the February 7th interviews so publicized?

THE WITNESS: Yes.

MR. GREENMAN: One morequestion and this may be considered broad but I hope in the framework of this hearing it is acceptable.

That is, it seems to me there is something contradictory on the question of ethics. For instance, in the case of an employer like General Motors or the Office of Economic Opportunity, these are employers who are known to you, sir, not only by the material that they present but also by reports either to their stockholders or to the United States Congress where all their activities and the use of their funds are accounted for; is that correct?

THE WITNESS: Yes.

MR. JONES: Mr. Chairman, I think this is argumentative. I don't think it is a question and I assume an opportunity will be provided to make argument to the panel. I don't object to the point being made or to the argument being made, but I do object to framing an argument in the form of a question.

MR. GREENMAN: Sir, it was just a question of the witness' use of the word "ethics," to ascertain whether or not he is in fact qualified to use the word in connection with the matter at hand.

THE CHAIRMAN: What is your question?

MR. GREENMAN: Admittedly a leading question, that the activities of the CIA are not reported nor are its funds so that for Mr. Clark to say that he had any opinion one way or the other on the ethics--

THE CHAIRMAN: He has stated his opinion. Do you have a question?

MR. GREENMAN: The question was on what possible information did you base that opinion since in fact the activities of this organization are secret?

THE WITNESS: This is true of almost any organization. There is a great deal of information that is secret in private industry also and we don't always know this in terms of research.

I spent some ten years in the chemical industry where a great deal of research was not reported at all because of competitive situations and if you look through our files which are open to anyone in our library, you will find that the information about employers in general varies tremendously in its detail.

MR. GREENMAN: But the use of funds is generally open to the stockholders?

THE WITNESS: Not entirely. There are privately owned organizations that don't report.

MR. GREENMAN: You feel there is no difference involved in the secrecy involved between public research say as that of General Motors and the CIA?

THE WITNESS: I don't know.

MR. GREENMAN: I don't have any more questions. Thank you, sir.

THE CHAIRMAN: Dean Flanigan?

DEAN FLANIGAN: We have no questions at this time, thank you.

THE CHAIRMAN: Has Professor Pardue arrived yet?

MR. FIORAVANTI: May I?

THE CHAIRMAN: You are Mr. Fioravante?

MR. FIORAVANTI: I have no questions.

THE CHAIRMAN: Is Professor Goldman here? Mr. Schidlovsky?

MR. SCHIDLOVSKY: No questions.

THE CHAIRMAN: Mr. Rachlin?

MR. RACHLIN: I just have a couple and Mr. Rockwell has one or two which he will ask.

THE CHAIRMAN: I wonder if it is appropriate for both of you to be putting questions to--

A VOICE: Both were given as our representatives. Mr. Rockwell is one of our representatives too. I would name Rockwell as my own representative if that is necessary.

THE CHAIRMAN: That wouldn't be necessary.

MR. RACHLIN: I wanted to clarify something.

EXAMINATION BY MR. RACHLIN:

Q Mr. Clark, did you indicate that if the students had come to you on the morning of the 8th and discussed what you say are the ethical considerations, you would have perhaps altered your decision about holding interviews that day?

A I doubt it. I would have considered them, certainly.

Q You knew, of course, after the interviews of November there had been the big meeting with President Kirk; is that right?

A Yes.

Q Hadn't the decision then been made by President Kirk to go ahead with interviews with the CIA?

A Yes.

Q So that if you had called that off you would have been reversing his decision?

A I didn't say I would call them off, I said I would consider them.

Q Consider them, I suppose, that is a broad word. You didn't feel that you could tell President Kirk in light of his decision that you were going to do something differently?

A No.

MR. ROCKWELL: First I would like to submit in evidence an article from The Times of February 19th naming--

MR. JONES: Objection. Hearsay.

MR. ROCKWELL: Excuse me. May I have a ruling on this? Wasn't the document submitted here a minute ago of the CIA hearsay?

MR. JONES: Hearsay is admissible without objection.

MR. ROCKWELL: Would you make a ruling on that?

THE CHAIRMAN: I am going to rule for the moment, Mr. Rockwell, that newspaper stories from The New York Times are not appropriate--

MR. ROCKWELL: Excuse me. We have been referring without even documentation to the NSA affair, to a number of things about the CIA and how can we refer to them if the submission of articles from which we probably gain much of our knowledge is hearsay?

THE CHAIRMAN: The references, Mr. Rockwell, were initiated by your co-counsel, Mr. Rachlin.

MR. ROCKWELL: And you allowed them to be permitted.

MR. JONES: Questions were raised in terms of Mr. Clark's knowledge.

MR. ROCKWELL: In other words, you are going to invcke fairly strict legal procedures here; is that correct?

MR. JONES: If you are asking me, I am going to object to things I think are objectionable.

A VOICE: Point of information on this. I would like to ask a question.

THE CHAIRMAN: What is your name?

MR. JACOBS: John Jacobs.

THE CHAIRMAN: You are represented by Mr. Rockwell?

MR. JACOBS: I would like to ask you a question.

THE CHAIRMAN: You have a counsel here to do that for you.

MR. ROCKWELL: I will withdraw on this.

I would like to make a request of this panel if the hearing continues beyond today, that it subpoena Mr. Francis Plimpton, a trustee of Barnard College in regards to his relationship to the supposed conduit organization of the CIA.

THE CHAIRMAN: We have no subpoena power and as an attorney you should know that.

Are you an attorney?

MR. ROCKWELL: I am not an attorney at all. I am a student advisor.

I would like to ask the question. Do you know if the CIA ever rigged an election?

THE WITNESS: No, I don't.

MR. ROCKWELL: Or ever operated secretly?

THE WITNESS: I suspect they do.

MR. ROCKWELL: You suspect they do?

THE WITNESS: Yes.

MR. ROCKWELL: Are you sure there is a war on in Vietnam?

THE WITNESS: Yes.

THE CHAIRMAN: Mr. Rockwell, I think you can ask your questions without innuendoes, sir.

MR. ROCKWELL: I am sorry for the innuendo. The issue here is first whether he has made a misjudgment regarding the character of the CIA and that seems to me a very germane issue.

THE CHAIRMAN: He has answered your questions as well as he can. I am not sure what further information you can elicit from these questions.

MR. ROCKWELL: Apparently you said a while ago you have knowledge of the jobs the CIA is recruiting for?

THE WITNESS: Right.

MR. ROCKWELL: How do you know they are not lying?

THE WITNESS: I don't.

MR. ROCKWELL: You have no suspicion they might be and that this whole thing you presented is euphemism for the kind of actions that perhaps you read about in the papers?

THE WITNESS: I have no basis for it as far as I can see.

MR. ROCKWELL: There is no basis for it. It is amazing.

(Laughter.)

THE CHAIRMAN: This is going to be enough of that. Unless you behave yourself, Mr. Rockwell, that will be enough of you.

MR. ROCKWELL: I submit this panel has made a rule of evidence such that the entire issue that is most germane to the case is to be excluded, the nature of the CIA.

THE CHAIRMAN: I take it if that issue is appropriate, and it may well be, that the time to introduce that issue will be after the University has described the events of February 8th.

MR. ROCKWELL: All right, I will go on.

As I understand it, you are a witness for the plaintiff here?

THE CHAIRMAN: There is no plaintiff here.

MR. ROCKWELL: Excuse me. Did anyone make a complaint to you about what had happened, Mr. Clark?

THE WITNESS: On the 8th of February?

MR. ROCKWELL: Right, regarding the sit-in.

THE WITNESS: Not directly.

MR. ROCKWELL: No one made a complaint. No one desired these men be punished for any action they did?

THE CHAIRMAN: Mr. Rockwell, do you have any other questions that are appropriate by way of examining Mr. Clark?

MR. ROCKWELL: You are an attorney, Mr. Berger. Surely you must know it is awfully difficult to conduct a case with a plaintiff incognito. If no one made a complaint, I wonder why this hearing came about. Did the CIA make a complaint or did any students seeking to recruit make a complaint?

THE CHAIRMAN: I don't want to engage in a colloquy with you. I said there is no plaintiff. Plaintiff is a word of art used to describe someone who has brought a lawsuit. There is no lawsuit. This is an advisory hearing for the purpose of determining what events took place on February 8th.

If you have questions of Mr. Clark that are appropriate to that issue, you may ask them. If you have none, will you please sit down?

MR. ROCKWELL: According to the letter that was sent to these men as one who has been charged with taking part in the demonstration. We at least request to know--I don't request any legalism, who has made a charge.

THE WITNESS: Are you asking me this question?

PROF.JONES: It is not an appropriate question for the witness.

MR. ROCKWELL: I was asking the witness if anyone made a charge to him.

PROF.JONES: He has answered your question and he answered no. That is all the personal knowledge he has. You can't elicit knowledge the witness doesn't possess. If you want to make a request of the Chairman, do so.

MR. ROCKWELL: That is the point I wanted to make. Thank you.

THE CHAIRMAN: I think we should excuse Mr. Clark.

It is ten minutes to five. We were going to adjourn promptly at five o'clock.

Do you want to begin examining your next witness?

PROF. JONES: I might call the photographers, if they are present. Mr. Jahn or Mr. Hernandez.

MICHAEL JAHN, called as a witness, testified as follows:

EXAMINATION BY PROF. JONES:

Q Mr. Jahn, were you present on the day of February 8th, in and around the employment center, Dodge Hall?

A That is right.

Q Did you take pictures during that day of incidents occuring in Dodge Hall?

A That is right.

Q Mr. Jahn, I would like you to look at these pictures and tell me whether the pictures are the ones that you have taken.

MR. RACHLIN: I assume there are duplicates.

PROF. JONES: There are duplicates, but these were made up by someone else and not all of them were taken by Mr. Jahn.

Do you want to go through these one at a time?

MR. RACHLIN: Do you have certain pictures that you want to introduce?

PROF. JONES: I will introduce them all if it is convenient but I have certain ones I am interested in introducing.

MR. RACHLIN: Why don't you pick the ones that you are interested in. There maybe all kinds of reasons, I haven't looked them over very carefully.

BY PROF. JONES:

Q This is a picture numbered 43?

A I took that picture.

Q Would you please speak a little louder?

A I took that picture, yes.

PROF. JONES: Are your pictures numbered?

MR. RACHLIN: We have 43, yes.

PROF. JONES: I propose to submit Photograph No. 43 in evidence. Mr. Jahn has testified that he took it.

MR. RACHLIN: I would like to ask a few questions about how he took the picture.

PROF. JONES: I have no objection.

EXAMINATION BY MR. RACHLIN:

Q Mr. Jahn, the No. 43, does that have any significance in the terms of the sequence of pictures you took or is that somebody else's number?

A To my knowledge, that has significance only to the section in the Office of University Relations who numbered and sorted the pictures.

PROF. JONES: They did this to make sure each set was complete, as I understand it.

Q Did you develop this picture?

A No, I merely took the pictures.

Q Where did you take them to develop?

A The pictures were developed by the University photographer.

Q Do you know of your own knowledge whether this represents the entire picture that you took or could this have been trimmed or clipped in any way?

A To the best of my knowledge, that represents the entire negative that I took.

Q Do you have the negative?

A I believe the University has the negatives.

Q Have you seen the negative since the pictures were taken?

A Since the pictures were developed, I take it you mean?

Q Since the negatives were developed, yes.

A Yes, I have.

Q So this then is the entire picture that you took?

A Yes.

Q Do you recall what time you took this picture?

A No, I do not.

MR. RACHLIN: I have no objection to the picture going in.

BY PROF. JONES:

Q Picture No. 42--

THE CHAIRMAN: Should that picture be identified?

PROF. JONES: If you have someone who fulfills the role of clerk I will be happy to hand him the picture and have it identified.

(Photograph, marked University Exhibit A in evidence, as of this date.)

PROF. JONES: Picture 42 as University Exhibit B.

MR. RACHLIN: Did you take 42?

THE WITNESS: Yes, I did.

MR. RACHLIN: I have no objection to the picture as such.

THE CHAIRMAN: Would you mark it?

(Photograph, marked University Exhibit B in evidence, as of this date.)

PROF. JONES: No. 41.

THE CHAIRMAN: This will be University Exhibit C.

Do you have any objection if I mark them for identification.

(Photograph, marked University Exhibit C in evidence, as of this date.)

MR. RACHLIN: I am assuming, of course, that the witness would testify that this represents the scene that he saw at the time he took that picture.

THE WITNESS: Yes, it does.

(Photograph, marked University Exhibit D in evidence, as of this date.)

MR. RACHLIN: There is no objection. Was

this also taken by Mr. Jahn?

PROF. JONES: All of these pictures were taken by Mr. Jahn unless he specified otherwise.

MR. RACHLIN: Of course, he developed none of them.

THE WITNESS: I developed and printed none of them. I took the pictures.

MR. RACHLIN: Let me ask him a couple of questions.

BY MR. RACHLIN:

Q How did you happen to get there, what were you doing there, did you just stumble there?

A No.

Q Did somebody ask you to go there?

A I went there myself to take pictures for possible use in Columbia University magazine.

Q Who asked you to take the pictures?

A While I was there, it was suggested by two people, Mr. DeNisco and Proctor Kahn that I should have pictures of all present in case the University wished to use them to identify those who were there.

Q Are you a student of the University?

A No, I am associate director of college relations at Columbia.

Q Are you normally a photographer?

A No, I am a photographer only incidental.

Q Were you paid a fee for these pictures?

A No, I was not.

PROF. JONES: No. 39 is University Exhibit E.

(Photograph, marked University Exhibit E in evidence, as of this date.)

MR. RACHLIN: No objection.

PROF. JONES: No. 36 as University Exhibit F.

(Photograph, marked University Exhibit F in evidence, as of this date.)

PROF. JONES: No. 26 as University Exhibit G.

(Photograph, marked University Exhibit G in evidence, as of this date.)

PROF. JONES: No. 22 as University Exhibit H.

(Photograph, marked University Exhibit H in evidence, as of this date.)

MR. RACHLIN: No objection to 22.

PROF. JONES: No. 21, University Exhibit I.

(Photograph, marked University Exhibit I in evidence, as of this date.)

PROF. JONES: In the interest of adjourning, I will make that the last one.

MR. RACHLIN: I have no objection to 21 either.

THE CHAIRMAN: We will adjourn and reconvene in this room tomorrow morning at nine o'clock.

(Time noted: 5:00 p.m.)

February 20, 1967

INDEX

WITNESSES

	EXAMINATION BY	PAGE
Alexander Clark	Prof. Jones	24
	Mr. Rachlin	46
Michael Jahn	Prof. Jones	93 96
	Mr. Rachlin	95 98

EXHIBITS

UNIVERSITY		IN EVID.
A	Photograph	96
B	Photograph	97
C	Photograph	97
D	Photograph	97
E	Photograph	99
F	Photograph	99
G	Photograph	99
H	Photograph	99
I	Photograph	100

HEARINGS BEFORE THE ADVISORY PANEL

TO CONSIDER THE

STUDENT DEMONSTRATION OF FEBRUARY 8, 1967

Columbia University,
Low Memorial Library,
116th Street and Broadway,
New York, N. Y.

February 21, 1967,
9:50 a.m.

Before:

PROFESSOR CURTIS J. BERGER, Chairman,

PROFESSOR AARON W. WARNER,

DEAN KEVIN SULLIVAN,

DEAN DAVID B. TRUMAN,

MR. DAVID LANGSAM,

MR. DAVID MENT,

Advisory Panel

COUNSEL:

PROFESSOR WILLIAM K. JONES

ATTORNEY CARL RACHLIN

RECORDERS:

LEE HELLER,
Tape Recorder

RICHARD KAUFMAN,
Shorthand Reporter and Notary Public of
the State of New York

o0o

THE CHAIRMAN: The reporter is here. We will now resume the hearings.

Will you indicate your presence when I call your name?

Benson Bobrick?

MR. BOBRICK: Here.

THE CHAIRMAN: Robert Peter Bobrick?

MR. BOBRICK: Here.

THE CHAIRMAN: John Cauman?

MR. CAUMAN: Here.

THE CHAIRMAN: Is Dean Flanigan here this morning?

MR. CAUMAN: Yes.

THE CHAIRMAN: Robert Dillon?

MR. DILLON: Here.

THE CHAIRMAN: Richard Fioravanti?

MR. FIORAVANTI: Here.

THE CHAIRMAN: Is Prof. Pardue here?

MR. FIORAVANTI: I don't know.

THE CHAIRMAN: Still missing.

Is Prof. Pardue here? Have you made any further effort to contact him?

MR. FIORAVANTI: No, I didn't.

THE CHAIRMAN: Are you prepared to have the hearings continue without his presence?

MR. FIORAVANTI: Yes, I believe so.

THE CHAIRMAN: Paul Gallagher?

MR. GALLAGHER: Here.

PROF. JONES: Mr. Chairman, hasn't Mr. Gallagher been eliminated from the hearing by reason of the fact he is not a student?

THE CHAIRMAN: Yes. I just wanted to establish his presence.

(Laughter)

THE CHAIRMAN: George Gruenthal?

MR. GRUENTHAL: Here.

THE CHAIRMAN: Chris Iijima?

MR. IIJIMA: Yes.

THE CHAIRMAN: Is Mr. Greenman here?

MR. IIJIMA: I am prepared to continue without him.

THE CHAIRMAN: John Jacobs?

MR. JACOBS: Here.

THE CHAIRMAN: Susan Kaplow?

MISS KAPLOW: Here.

THE CHAIRMAN: Michael McCann?

MR. McCANN: Here.

THE CHAIRMAN: Michael Melzer?

MR. MELZER: Here.

THE CHAIRMAN: James Newton?

MR. NEWTON: Here.

THE CHAIRMAN: Anthony Papert?

MR. PAPERT: Here.

THE CHAIRMAN: John Schidlovsky?

MR. SCHIDLOVSKY: Here.

THE CHAIRMAN: Is Prof. Goldman here?

MR. SCHIDLOVSKY: No.

PROF. GOLDMAN: Yes, I am.

THE CHAIRMAN: Richard Sober?

MR. SOBER: Here.

THE CHAIRMAN: Edward Spannaus?

MR. SPANNAUS: Here.

THE CHAIRMAN: Harry Steinbauer?

Mr. Steinbauer is not here.

Mr. Fuerst, will you try to locate Mr. Steinbauer, please?

PROF. JONES: Mr. Chairman, by whom is Mr. Steinbauer represented?

THE CHAIRMAN: He is represented by Mr. Rachlin.

Roger Taus?

MR. TAUS: Here.

THE CHAIRMAN: If Mr. Rachlin has no objection, I would like to--the panel would like Proctor Kahn to take the chair for the limited purpose of testifying with respect to Mr. Cauman and Mr. Iijima and Mr. Schidlovsky, all of whom indicating their intention to call Proctor Kahn as a witness in their behalf, and since Mr. McCann and Mr. Steinbauer, both of whom you also represent have indicated to you that they were not present, you might want to examine Proctor Kahn as to their presence or nonpresence on February 8th.

WILLIAM E. KAHN, called as a witness, testified as follows:

PROF. JONES: Mr. Chairman, do you intend to conduct the examination?

THE CHAIRMAN: I think I will.

MR. RACHLIN: How does Proctor Kahn spell his name?

THE WITNESS: K-a-h-n.

THE CHAIRMAN: Proctor Kahn, were you present in the vicinity of Room 606, Dodge Hall on February 8th?

THE WITNESS: Yes.

THE CHAIRMAN: Will you describe to the panel the nature of your presence, when it began and its duration?

THE WITNESS: Yes, sir. Could I begin that morning when the whole incident occurred or do you want me to go through the whole story or just the time I was up in the sit-in?

THE CHAIRMAN: I think at this time if you will describe only what you saw.

THE WITNESS: That is what I mean, from the beginning, 9:00 o'clock in the morning?

THE CHAIRMAN: From the time you arrived at Dodge Hall.

THE WITNESS: Approximately 9:00 o'clock-- I had been up in the vice president's office prior to

9:00 o'clock. At about 9:00 o'clock I walked down to the security office to meet with Cap.. DeNisco and we were going over to Dodge where picketing was scheduled to take place that morning by the Students for Democratic Society of Columbia University.

Capt. DeNisco informed me at that time that he had received a call from the personnel office, indicating there were some problems there with a woman requesting employment. He told me that he would meet me on College Walk after he had taken care of this incident in the personnel office.

About five after 9:00 I proceeded down to College Walk and the picket line had already been formed. There were about approximately 20, 25 people in the picket line at that time and they were carrying banners and chanting"CIA must go." No problem there. We encountered no problems. I did and the picketing went on peacefully.

At about 20 minutes to 11:00, quarter to 11:00, Mr. Dillon, who was one of the pickets, sort of stepped out of line and made an announcement to all the pickets that he was going upstairs to the 6th floor of Dodge Hall and block the door, and anyone else that wished to follow him, please do so--words

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At about 20 minutes to 11:00, quarter to 11:00, Mr. Dillon, who was one of the pickets, sort of stepped out of line and made an announcement to all the pickets that he was going upstairs to the 6th floor of Dodge Hall and block the door, and anyone else that wished to follow him, please do so--words to that effect. They are not quotes.

Mr. Dillon was followed by approximately 12 people--proceeded up to the 6th floor of Dodge.

I immediately called the security desk to inform the supervisor to contact Capt. DeNisco and inform him that some of the pickets had gone up to the 6th floor of Dodge for the purpose of blocking the door of Room 606. I then followed. I ran up--no, I went up by elevator to the 6th floor.

When I arrived on the 6th floor, the pickets had sat down on the floor in front of Room 606 along the wall in front of the door in a compact group, preventing anyone from going into the room.

THE CHAIRMAN: What time was this?

THE WITNESS: This was approximately quarter to 11:00, between 20 of and a quarter to 11:00.

THE CHAIRMAN: I will ask you to skip over some of the details, because thosemay be brought out later.

How long did you remain in the vicinity of 606, Dodge Hall?

THE WITNESS: I was there until approximately 12:15, when an incident occurred that I had to be away from that area.

There was a Sundial rally taking place at that time and Mr. Gruenberg from SDS had come up to the 6th floor and requested my presence at the Sundial, as he had indicated there were some people in the vicinity of the Sundial who were sort of intimidating the people speaking and the possibility of trouble was present. He requested that I be over there.

THE CHAIRMAN: So you were present--

THE WITNESS: When they arrived on the floor until approximately a quarter after 12:00.

THE CHAIRMAN: When did you return?

THE WITNESS: About a quarter to 1:00.

THE CHAIRMAN: How long did you remain outside the door after you returned?

THE WITNESS: Until about a quarter to 2:00, when I had a sandwich in Mr. Clark's office for about 15 minutes.

THE CHAIRMAN: You returned at about 2:00 o'clock?

THE WITNESS: Yes.

THE CHAIRMAN: How long did you remain then?

THE WITNESS: Until approximately 3:30,

when the students left.

THE CHAIRMAN: The agreement was reached?

THE WITNESS: The agreement was reached and the students left.

THE CHAIRMAN: Dean Flanigan, you represent John Cauman. Would you care to question Proctor Kahn? I think we have established a foundation for your questioning.

DEAN FLANIGAN: Proctor Kahn, did you see Mr. Cauman there at any time during the demonstrations?

THE WITNESS: No.

DEAN FLANIGAN: Did Mr. Cauman come to you subsequently after the demonstration and indicate to you anything about his presence or absence?

THE WITNESS: Yes, he did.

DEAN FLANIGAN: Could you tell us what he said?

THE WITNESS: Mr. Cauman came to my office. I knew John Cauman and I had talked to him and said to him that I had not seen him at the sit-in and I was wondering why he had signed the paper saying he was sitting in at that time and at that time he had the understanding that the thing that he was signing was a petition. He was not aware that this was indicating that he was saying that he sat in in front of 606.

DEAN FLANIGAN: Have you seen the pictures that have been brought in in evidence?

THE WITNESS: Yes.

DEAN FLANIGAN: Have you seen Mr. Cauman's picture on those pictures?

THE WITNESS: No.

DEAN FLANIGAN: Would it be appropriate for Mr. Cauman to make a slight statement clearing up his part in the matter?

THE CHAIRMAN: I think Mr. Cauman, if he wishes, might tell the panel where he was during the course of the demonostrations.

Mr. Cauman, do you want to do so?

MR. CAUMAN: May I have permission to read a written statement which I prepared describing my part in the events of February 8th?

THE CHAIRMAN: By all means.

MR. CAUMAN: Thank you.

THE CHAIRMAN: This is a statement indicating where you were during the course--

MR. CAUMAN: Yes.

On Wednesday, February 8th, I, along with over a hundred students, formed an act of protest against the CIA by marching in a picket line outside of Dodge Hall.

18 individuals chose to sit in on the 6th floor of Dodge Hall, while recruitment was going on. I was aware of their decision, but chose not to participate, since I considered this to be an inopportune time for such a tactic.

Later that afternoon, we on the picket line--

MR. RACHLIN: May Iinterrupt?

I will now object to the reading of this statement, as being purely of a personal opinion and nothing to do with the facts of this matter, and it is prejudicial. I ask that it be stricken from the record.

PROF. JONES: I join in the request.

THE CHAIRMAN: I think that is a request well taken.

Mr. Cauman, you may indicate where you were during the course of the day, but I don't think it would be appropriate for you to comment on the activities of the others.

MR. CAUMAN: Could I then withdraw the last sentence, the continue with the statement?

THE CHAIRMAN: It is already stricken.

(continued on page 114)

PROF. JONES: Mr. Chairman, may I question the witness with a view toward his possible dismissal from the proceeding? I simply wish to ask where he was during the day and establish that he was not at the sit-in.

MR. CAUMAN: That is what I was about to say. I wouldn't read it. I will say it.

THE CHAIRMAN: Why don't you?

MR. CAUMAN: I was there from 9 until 11 o'clock picketing the outside of the building. At 11 o'clock I had a class in Hamilton Hall and I went to Hamilton Hall for the class but my instructor's wife was having a baby and the class did not meet.

I then--

THE CHAIRMAN: We hope not there.

MR. CAUMAN: Right. I then returned to the picket line until about noon. At noon I went to lunch--noon I went to the rally. The rally continued until about 2 o'clock. 2 o'clock I rejoined the picket line. It was raining. I think I went inside for a while, it was cold.

At 3 o'clock I returned to the picket line. At about 3:15 we received the information, I don't remember who delivered the information, that the picket line had dissolved and that--excuse me, that the sit-in had dissolved and that a statement had been signed saying there would be no more recruitment that day and one of the students who had sat in told me that he had to go to Dean Alexander's office because he had been singled out and a number of students on the picket line joined him.

We went to Dean Alexander's office--

THE CHAIRMAN: I take it we can probably have you break off your description of the events of that day because that takes us beyond the time when the demonstration ended.

Do you have any further questions to ask of Mr. Cauman, Dean Flanigan?

DEAN FLANIGAN: Would it be appropriate for me now to move for dismissal of the charges against Mr. Cauman?

PROF. JONES: I would join in the motion.

THE CHAIRMAN: Do any other members of the panel have any questions to put to Mr. Cauman?

DEAN SULLIVAN: You were never in front of Room 606, Dodge Hall?

MR. CAUMAN: On that day, yes.

THE CHAIRMAN: I don't know what the mechanics are for taking a vote of this panel--

MR. RACHLIN: I don't see how the panel has the authority frankly.

THE CHAIRMAN: What we can do is recommend to the President of the University that the charges against Mr. Cauman be dismissed. I think I can probably prophesy that that will in fact be the President's course of action.

DEAN TRUMAN: Mr. Chairman, that being presumably the vote of the panel, would it not be appropriate to indicate to Mr. Cauman and Dean Flanigan that they need no longer be in attendance at these sessions unless they wish to be?

THE CHAIRMAN: I think that goes without saying but we will say it.

PROF. JONES: Mr. Chairman, Mr. Fioravanti--I guess he is not represented--

MR. FIORAVANTI: Are you by implying they need not be here any longer, imply that they need be here before?

THE CHAIRMAN: The charges against Mr. Cauman had been made and it seems to us one of the duties of this panel is to hear the charges and if it seems the charges were not well founded, to recommend that they be withdrawn.

MR. FIORAVANTI: He is not in voluntary attendance. Was he in mandatory attendance before?

THE CHAIRMAN: Yes.

MR. FIORAVANTI: We all have to be here?

THE CHAIRMAN: I think you have to decide that for yourself, Mr. Fioravanti. You were asked to be here. Hearings are being held to consider the disposition of charges made against you.

You can either withdraw to your seat or depart elsewhere if you wish, Mr. Cauman.

Is Mr. Greenman here?

Mr. Iijima?

MR. IIJIMA: Before I cross-examine Proctor Kahn--

THE CHAIRMAN: Cross-examine? He is your witness for these purposes.

MR. IIJIMA: I would like to make a statement before simply because I believe that the issue here is not who was at the sit-in but why a sit-in was held.

THE CHAIRMAN: I think, Mr. Iijima, that statement would be untimely. If in the course of the presentation, if you will, defense, that issue becomes relevant and if the other students wish to call you for the purpose of making a statement, we can decide the relevance of the statement then.

It seems to me both inappropriate for you to make the statement now and possibly prejudicial to the defense of the other students.

What is before us now is simply your presence or non-presence on February 8th and if you wish, you may examine Proctor Kahn. He is available to you for examination or if you want us to examine him with respect to your presence or non-presence on February 8th or if you wish to make a statement as to that, you are privileged to do so. What is your privilege?

MR. IIJIMA: With due respect, Mr. Chairman, I feel I have been called here, I have been taken out of classes and I have been--how do I say it--bothered or hampered or hindered and I feel I have the right to make a personal statement because I feel my defense is intricately bound up to what I consider a moral commitment, why I would sign a paper, why I think--what my definition of mutual responsibility is.

THE CHAIRMAN: Mr. Iijima, the charge against you is not that you signed a paper. If that were the charge against you, then it would seem appropriate for you to tell us why you signed the paper. The charge against you is that you were present at the hearings or at the demonstrations on February 8th. The major evidence of that charge is your signature on a paper. If in fact the evidence is that you were not present, we will accept both your statement that you were not present corroborating Proctor Kahn's statement that you were not present. That seems to be the matter that should be brought to our attention now.

Would you like us to examine Proctor Kahn?

MR. IIJIMA: Would you read the charges?

THE CHAIRMAN: The charges against you are contained in the letter you received.

MR. IIJIMA: I am sorry to be making such a big deal out of this but it seems to me extremely important because there is such a moral issue here--

THE CHAIRMAN: Mr. Iijima, the hearings are distinct with a very serious moral issue and we appreciate how deeply you feel.

Our duty this morning and probably for the balance of the week is to examine the charges that have been made against you and we must limit our examination to those charges and not to charges that are not before us.

The charge before you is your presence at the demonstration and your conduct.

A VOICE: One of the charges--

PROF. JONES: He is represented by counsel, Mr. Chairman.

THE CHAIRMAN: Won't you sit down? Mr. Dillon, would you please sit down?

Mr. Iijima, do you want us to examine Proctor Kahn?

MR. IIJIMA: I don't know how to go about this. All I can ask is Proctor Kahn, was I there?

THE WITNESS: Mr. Iijima was not there during the times I was there. I have not seen his picture.

THE CHAIRMAN: Mr. Iijima was not present during the hours that you mentioned your being present, Proctor Kahn?

THE WITNESS: That is correct.

THE CHAIRMAN: You have examined the photographs?

THE WITNESS: I have examined the photographs.

THE CHAIRMAN: Mr. Iijima's photograph is not present?

THE WITNESS: That is correct.

THE CHAIRMAN: He does not appear?

THE WITNESS: He does not appear.

THE CHAIRMAN: Mr. Iijima, you are privileged to tell us, if you want, where you were, physically, not spiritually, on February 8th or you are privileged not to as you wish.

MR. IIJIMA: I will tell--

THE CHAIRMAN: Why don't you come here so the reporter will have the benefit--

MR. IIJIMA: I was on the picket line from about 9:15 to a quarter of 10 and I had a class at 10 o'clock. My teacher was not there.

However, a substitute was there and we stayed until about 10:30 at which time I went to get some books.

I had another class at 11 in which I stayed until 11:50. I went and ate lunch, took in about five, ten minutes of the rally. Had a class at 1:10 which I went to and a class at 2:10 which I went to. The reasons that attracted me to the people coming out of the sit-in was that there was a counter-picket, there was a huge sheet, something about the SDA was a Mao tool and what attracted me to that was the fact--

MR. RACHLIN: Prof. Berger, I think this part of his testimony is quite irrelevant what he thought. As a matter of fact, Prof. Berger, I think it really quite undignified after Proctor Kahn has said this gentleman was not present to ask him where he was. What difference does it make?

THE CHAIRMAN: Except that Proctor Kahn is not able to testify to the entire interval from before 10 to 3:30. He stated he was not present for parts of that period and I think we have to fill in the gaps if Mr. Iijima wants to do so.

MR. IIJIMA: The only thing I want to say, mostly I came back because I saw this thing and I thought it was racially insulting.

PROF. JONES: What time are we talking about?

MR. IIJIMA: About 3:20.

THE CHAIRMAN: It was about the moment when the demonstration ended?

MR. IIJIMA: May I say in all due respect to this panel, I think you mentioned before in the onset of this trial there is something more at trial here and I think what is basically on trial here isn't why I am here, is that the integrity of this University is on trial, whether it stands for duplicity, whether it stands for truth, whether it stands for humanity or barbarism.

PROF. JONES: In the interest of humanity, I move that the panel remove the charges against Mr. Iijima on the grounds that there is no evidence he was connected with the sit-in in front of Dodge Hall.

THE CHAIRMAN: I think that will be the decision of the panel. Once again, you too are privileged to remain or not, however you prefer.

Is Prof. Goldman here now?

PROF. GOLDMAN: Yes.

THE CHAIRMAN: Would you care to examine Proctor Kahn on behalf of John Schidlovsky?

PROF. GOLDMAN: Yes, I will. I should say at this point, it had not been my understanding I was going to conduct any kind of quasi-legal questioning or defense and I would not like my lack of sophistication to be prejudical.

THE CHAIRMAN: We are all unsophisticated.

PROF. GOLDMAN: In different ways.

(Laughter.)

PROF. GOLDMAN: Proctor Kahn, did you see Mr. John Schidlovsky at any time on the premises that had been indicated in connection with this incident?

(Continued on page 124.)

THE WITNESS: He was not involved in the sit-in outside the Room 606, Dodge Hall, that I saw. I did not see his face in any of the pictures that were taken.

THE CHAIRMAN: Mr. Schidlovsky, would you care to indicate to the panel where you were during the period from shortly before 10:00 until 3:30 February 8th?

MR. SCHIDLOVSKY: Before I answer those questions, I would like to say I find this personally insulting. We haven't been able to read our statements--

MR. RACHLIN: Don't blame the panel, blame me for that.

MR. SCHIDLOVSKY: I would like to blame President Kirk. There were succinct charges against us and here I have been summoned to these and caused me a lot of inconvenience and I think yesterday the panel mentioned there was no subpoena power and now I have been summoned when several organizations knew I wasn't present. I think the same subpoena power could be used against President Kirk--

THE CHAIRMAN: Mr. Schidlovsky, in a

sense all of us are being asked to do overtime work in an effort, it seems to me, to treat the charges fairly and impartially and we are doing our best to do that.

I am sorry that it is necessary for any of us to be here.

MR. SCHIDLOVSKY: I just find it very arrogant of the panel not to question me on the basis of why I was called and that was on my signing the paper.

THE CHAIRMAN: You are not being charged, Mr. Schidlovsky, with the offense of signing a paper. There is no regulation that I know about that bars any student from signing any paper if he wishes to.

Certainly that isn't in issue before us. What is in issue before us is the facts growing out of a demonstration that took place on February 8th in front of 606 Dodge Hall.

The charge is that you were present at that demonstration, the charge that you lent credence to by signing a paper in which you stated that you were present outside of Room 606. I can understand, I think the other members of the panel can also understand what prompted you to sign the paper if in fact you were not present in front of Room 606.

The immediate issue before us now is not what prompted you to sign the paper, but quite simply were you present outside of Room 606. Proctor Kahn has testified during the time he was present you were not present and all that I am asking is that you confirm that and add to that any statement you want to give us with respect to your presence or non-presence during the time that Proctor Kahn himself was not there.

MR. CAUMAN: Mr. Berger, Mr. Flanigan isn't here so I no longer have my counsel.

THE CHAIRMAN: But the charges against you insofar as this panel is concerned or insofar as recommendations of this panel are concerned have been dismissed.

MR. CAUMAN: Could I make a request of the panel that the letter we received be entered into the record, the letters we received since and the letters we signed be put on the record because the letters we signed never said we were present at the sit-in. It said we accept mutual responsibility for the sit-in.

THE CHAIRMAN: I take it very shortly or during the course of the hearings the letter to Dean Alexander will be introduced. I don't think it is appropriate for you and me now to engage in a controversy--

MR. CAUMAN: Mr. Berger, you just stated that John Schidlovsky signed a letter he was present at the sit-in.

THE CHAIRMAN: No.

MR. CAUMAN: I would like to enter on the record there was no such fact the letter was signed by--

PROF. JONES: If I may be permitted to examine the witness, I think we may expedite the proceeding. I have no objection to his being examined by his own advisor if his advisor wishes to examine him.

I think the procedure of permitting the witness to just ramble on is one that is likely to be prejudicial to the interests of the other students involved and I join with Mr. Rachlin in objecting to the procedure as being an improper one.

THE CHAIRMAN: Wouldn't you tell us, Mr. Schidlovsky, if you care to, where you were on February 8th from shortly before 10:00 until 3:30?

MR. SCHIDLOVSKY: I slept until about 10:50. I went to a class at 11:00 until 12:00. I attended the Sundial rally until about ten of 1:00. I went to a class, my advisor's class from 1:00 to 3:00. Then I met the contingent of students from the sit-in in Dean Alexander's office.

PROF. JONES: That was about 3:30 after the sit-in was concluded?

MR. SCHIDLOVSKY: It was about 3:20.

THE CHAIRMAN: Do any other members of the panel have questions to ask of Mr. Schidlovsky?

DEAN TRUMAN: Could I make one comment to Mr. Schidlovsky?

THE CHAIRMAN: Yes.

DEAN TRUMAN: I regret you had to spend the time to come here because it was an inescapable consequence the fact I had already sent or directed the letter be sent to you in connection with this incident and asked you to reply and then subsequently these proceedings were established.

We did have word that you had not been present and I had to take it up with this panel which had previously--which had taken over the proceedings and our whole purpose this morning was just to terminate quickly and as quickly as possible, those who were not there so their time would not be further imposed upon. I don't want to comment on the letter to Dean Alexander at the moment. Perhaps there will come out some reason for possible misunderstanding the exact intent of that letter which was obviously composed in some haste.

That is the only real reason you had to be here.

MR. RACHLIN: May we have identified the letter that Dean Truman is referring to that was sent out?

THE CHAIRMAN: Do you have a copy?

DEAN TRUMAN: I have a copy.

THE CHAIRMAN: Why don't you mark that letter for identification and Mr. Rachlin can examine it?

PROF. JONES: I take it this will be marked for identification only?

MR. RACHLIN: I would like to see it.

MR. SCHIDLOVSKY: Before I leave I would like to say with all due respect to Dean Truman, I do not regret for being here because there were strong considerations that lent me to signing this letter.

THE CHAIRMAN: I understand that.

MR. RACHLIN: Dean Truman a moment ago said he had sent out the letter. I don't know the exact term he used.

DEAN SULLIVAN: Dean Alexander's letter.

THE CHAIRMAN: It was a letter signed by Dean Alexander.

I take it, Mr. Schidlovsky, the panel has no further question of you and it will be the recommendation of this panel to President Kirk that the charges against you contained in the letter of February 15th be dismissed and you are privileged to remain as an observer or to withdraw as you wish.

Thank you.

MR. RACHLIN: There is a matter I would like cleared up which has nothing to do with the witness.

In his statement a moment ago to Mr. Schidlovsky, Dean Truman said pursuant to his request or under his guidance or pursuant to his instructions a letter was sent and I am trying to identify that letter.

Is this the letter we are talking about? It is signed by Dean Alexander.

DEAN TRUMAN: I said it was sent at my direction.

MR. RACHLIN: At this point I renew my motion that Dean Truman be excused from the panel. It is very clear from reading this letter that Dean Truman has prejudiced the case and I don't see how in all fairness Dean Truman can insist as he did yesterday of sitting upon this panel when he made these statements in this letter of February 10, 1967.

I offer this letter in evidence and I renew my motion.

PROF. JONES: May I see the letter? I haven't seen it previously.

MR. RACHLIN: Certainly.

PROF. JONES: This came from your office?

DEAN TRUMAN: Yes.

PROF. JONES: This is a copy of the letter?

DEAN TRUMAN: Yes.

PROF. JONES: I have no objection to its introduction in evidence.

We will mark it as Students' Exhibit No. 1.

(Letter dated February 10, 1967, marked Students' Exhibit 1 in evidence, as of this date.)

PROF. JONES: Mr. Chairman, as counsel for the University in this matter, I would like to join in the motion of Mr. Rachlin. I think the letter does prejudice the prospect of the panel's advisory recommendation being given the acceptance which it most certainly would deserve if the proceedings were to be conducted in a proper and fair manner and while I have no doubt that Dean Truman would fairly resolve the proceedings, I think that the statement which has just been made which came to my attention for the first time would inevitably lead to a feeling of unhappiness about the panel's decision which would inevitably prejudice its acceptance in the University community in general and for that reason, I make no motion but I do make a suggestion to Dean Truman and to the panel that it would be in the best interest of all concerned if Dean Truman withdrew from the panel. It is pointless for us to have a long drawn out proceeding with an infirmity of this kind, perhaps underlying its whole resolution.

DEAN TRUMAN: Mr. Chairman, may I speak to the point or would you prefer--

THE CHAIRMAN: I think the panel probably ought to withdraw and consider this.

DEAN TRUMAN: I will be glad to meet with the panel.

MR. RACHLIN: I would like to say one very brief thing before the panel recesses because everyone knows Dean Truman's reputation as being of a high and world famous scholar and my comment was not obviously directed to him personally and I would expect the same comment to be made about me if I found myself in an unfortunate position such as the panel is in at this time so I want him to understand that I did that in my duty to the students not because any lack of respect for his character or ability, but because I also not only avoid, as I said yesterday, impropriety, even the appearance of impropriety and Prof. Jones has perhaps stated it better than I, but I would like to join him in those remarks.

THE CHAIRMAN: We will take a brief recess.

(Short recess taken.)

THE CHAIRMAN: Will the record show that Richard Fioravanti has asked that Prof. Robert Wolf be substituted as his advisor and Prof. Wolf is now here?

PROF. WOLF: Yes.

THE CHAIRMAN: What must seem like light years ago we recessed after Mr. Rachlin moved, Mr. Rachlin made a motion in which Prof. Jones concurred that Dean Truman withdraw from our advisory panel. The basis for their objection to Dean Truman's presence, continuing presence on the panel was the content of a letter admittedly sent at Dean Truman's instance over the signature of Associate Dean Alexander to the Columbia College students against whom charges have been brought.

The letter stated, not as allegations, but rather as assertions, several factual matters that this panel has for its mandate to consider. Mr. Rachlin and Prof. Jones were of the view that by stating these matters as assertions, there was at least the possibility of Dean Truman having already prejudged the facts.

This was, admittedly, a serious and troublesome charge and as you know now we spent, I guess, better than two hours considering it. The letter which was sent to the Columbia College students was sent in the usual course of initiating disciplinary proceedings in accordance with the regulations and custom of this University in force when the events of February 8th occurred.

In directing Dean Alexander to write the letter, Dean Truman was doing what the Dean of each of the other colleges or schools in which students would have done, disciplinary proceedings were being initiated.

Dean Truman was not present outside Room 606 in Dodge Hall on February 8th and therefore has no firsthand knowledge of the events on which the charges are based nor did he write the letter. It was composed by Dean Alexander although admittedly Dean Truman saw the letter before it was mailed.

He read the letter to be sure it was sufficient to apprise the students of the charges made against them and of the facts on which the charges or at least the incidents on which the charges were based.

Am I correct, Dean Truman, in stating what your role was?

DEAN TRUMAN: Yes.

THE CHAIRMAN: I think what is of importance to each of us on the panel and certainly of importance to each of you on the other side of the panel is the credibility of these hearings. I said to you yesterday that we are making every effort to conduct these hearings fairly and compassionately. We cannot convince you of this by those of you who refuse to be convinced of this.

We are satisfied, each of us on this panel, that we can proceed with these hearings and that we can conduct them in a fair and compassionate manner.

WE are going ahead with these hearings.

We have told this both to Mr. Rachlin and Prof. Jones.

MR. RACHLIN: I have no further comment. I made my application.

THE CHAIRMAN: Then we will adjourn the hearings until tomorrow morning at 9:00 o'clock.

MR. RACHLIN: At this point I request that the hearing be continued on Thursday in view of the fact I have had a long-standing commitment at Rutgers University which will involve all of tomorrow and I would hope I would be allowed to keep that commitment, the Harvard University Law School, by the way.

THE CHAIRMAN: Do you have any idea now, Mr. Rachlin, as to the approximate number of witnesses you plan to call or the amount of time you will want?

MR. RACHLIN: My present belief is we will call not more than three witnesses. Obviously it is not necessary to call each one of the students as to the events that took place. One will speak for all or two at the most.

THE CHAIRMAN: I certainly want to be accommodating to you. Putting our personal commitments on the table, I told you when I first spoke with you this weekend that I have a teaching commitment in Oxford, Mississippi of all places for which I have to leave a week from Friday and I think it is very important that we finish up our business if it is at all possible before then. I think we should respect your request and we will adjourn the hearings until 9:00 o'clock Thursday morning.

MR. RACHLIN: Thank you very much.

DEAN TRUMAN: Since Mr. Rachlin is not representing Mr. Fioravanti, would it be proper to hear Mr. Fioravanti's case tomorrow in Mr. Rachlin's absence?

THE CHAIRMAN: I think it might be difficult for us to do that, Dean Truman, since some of it, perhaps the factual events on which the charges ag ainst Mr. Fioravanti are based are essentially those in which the charges against the others arebased.

We stand adjourned until Thursday at 9:00 o'clock.

(Time noted: 1:40 p.m.)

February 21, 1967

INDEX

WITNESSES

	EXAMINATION BY	PAGE
William E. Kahn	The Panel	107

EXHIBITS

STUDENTS'		IN EV.
1	Letter dated February 10, 1967	132

546

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HEARINGS BEFORE THE ADVISORY PANEL

TO CONSIDER THE

STUDENT DEMONSTRATION OF FEBRUARY 8, 1967

--x

Columbia University,
Low Memorial Library,
116th Street and Broadway,
New York, N. Y.

February 23, 1967,
9:20 a.m.

Before:

PROFESSOR CURTIS J. BERGER, Chairman,

PROFESSOR AARON W. WARNER,

DEAN KEVIN SULLIVAN,

DEAN DAVID B. TRUMAN,

MR. DAVID LANGSAM,

MR. DAVID MENT,

Advisory Panel

COUNSEL:

PROFESSOR WILLIAM K. JONES

ATTORNEY CARL RACHLIN

RECORDERS:

LEE HELLER,
Tape Recorder

RICHARD KAUFMAN,
Shorthand Reporter and Notary Public of
the State of New York

oOo

THE CHAIRMAN: The hearings will now resume. When I call your name, will you indicate your presence.

Benson Bobrich?

MR. BOBRICH: Here.

THE CHAIRMAN: Robert Bobrich?

MR. BOBRICH: Here.

THE CHAIRMAN: Robert Dillon?

MR. DILLON: Here.

THE CHAIRMAN: Richard Fioravanti?

MR. FIORAVANTI: Here.

THE CHAIRMAN: George Gruenthal?

MR. GRUENTHAL: Here.

THE CHAIRMAN: John Jacobs?

MR. JACOBS: Here.

THE CHAIRMAN: Susan Kaplow?

MR. KAPLOW: Here.

THE CHAIRMAN: Michael McCann?

MR. McCANN: Here.

THE CHAIRMAN: Michael Melzer? Is Michael Melzer here?

(No response.)

THE CHAIRMAN: Will you try to reach him, Mr. First? Perhaps you should wait until I finish.

James Newton?

MR. NEWTON: Here.

THE CHAIRMAN: Anthony Papert?

MR. RACHLIN: He is not here. I haven't seen him.

THE CHAIRMAN: Richard Sober?

MR. SOBER: Here.

THE CHAIRMAN: Edward Spannaus?

MR. RACHLIN: He must be temporarily out of the room.

THE CHAIRMAN: Harry Steinbauer?

MR. STEINBAUER: Here.

THE CHAIRMAN: Roger Taus?

MR. TAUS: Here.

THE CHAIRMAN: Melzer, Papert and Spannaus--

will you try to locate them?

MR. RACHLIN: Here is Michael Melzer.

THE CHAIRMAN: Michael Melzer?

MR. MELZER: Here.

THE CHAIRMAN: Mr. Rachlin, there are two men here who have stated in letters to the panel that they were not present at the sit-in on February 8th. Perhaps we can establish that right away. They are Michael McCann and Harry Steinbauer.

You are free to question Proctor Kahn on that.

MR. RACHLIN: Proctor Kahn was the last witness, as I recall.

THE CHAIRMAN: Yes.

MR. RACHLIN: I don't see him.

THE CHAIRMAN: He is here.

WILLIAM E. KAHN, resumed the stand and testified further as follows:

MR. RACHLIN: Was Proctor Kahn called--

THE CHAIRMAN: Proctor Kahn was called by the panel for the limited purpose of testifying as to the nonpresence of John Cauman, Chris Iijima and John Schidlovsky. All three of them had indicated to us they wanted to make Proctor Kahn their witness.

MR.RACHLIN: Then I will not at this time--I will save that right to ask Proctor Kahn any further questions.

THE CHAIRMAN: Yes.

EXAMINATION BY MR. RACHLIN:

Q Proctor Kahn, may I ask you do you know Michael McCann?

MR. RACHLIN: Will you stand up, Michael McCann?

Q Do you know Michael McCann?

A I know him now.

Q In recalling the events of February 8th which have been described here, did you in the hours in which you were present during that activity see Michael McCann?

A No, sir.

Q As I understand, you said you were not there approximately--

A 12:15 to a quarter to 1:00 and then from 1:15 to 1:30.

Q There were two short periods when you were not present?

A Yes.

Q In any event, you did not see him in the times you were there?

A No.

MR. RACHLIN: Harry Steinbauer, will you stand up?

Q Do you know Harry Steinbauer?

A I didn't know his name. I have seen the face on campus several times. Again, there are many people I don't know the names, but I know their faces.

Q Did you see him at the activity?

A No.

MR. RACHLIN: I suppose I ought to call McCann and Steinbauer--Michael McCann, stand up. Don't come forward. You have been present all through the hearings, have you not?

MR. McCANN: Yes.

MR. RACHLIN: At any time during the demonstration in front of Room 606 Dodge Hall, were you physically present?

MR. McCANN: No, I was not.

MR. RACHLIN: I don't know whether Prof. Jones wants to ask any questions.

PROF. JONES: If the panel is satisfied, I am.

MR. RACHLIN: Harry Steinbauer, stand up. I now ask you, at any time during the activity·

demonstration in front of Room 606 or in the vicinity of Room 606, Dodge Hall, were you present on February 8th?

MR. STEINBAUER: No.

THE CHAIRMAN: Proctor Kahn, in examining the photographs taken during the day, February 8th, did you see either Michael McCann or Harry Steinbauer's picture in the photograph?

THE WITNESS: No, sir.

THE CHAIRMAN: Do any of the other panel members have any questions to ask of either Mr. Steinbauer or Mr. McCann?

As to Michael McCann and Harry Steinbauer, this panel will recommend to the president that the charges brought against them be dismissed. Both men are privileged to remain here or to leave the room, as they wish.

I received a letter from one of your instructors, Mr. McCann, in which he told me of an 11:00 o'clock class, and asked me to try to dispose of your matter before then, because it would be very serious if you missed that class. I wish I could feel that way about students missing my class.

Is John Sinisi here?

MR. SINISI: Yes.

THE CHAIRMAN: Mr. Sinisi, on Monday during our hearings you were one of those who stood and stated to the panel that you were present at the demonstration on February 8th, that you participated in it. Have you been present here from the beginning of the hearings?

MR. SINISI: Yes.

THE CHAIRMAN: Did you indicate to Mr. Rachlin before the hearings began, either directly or through the offices of another, that you would like Mr. Rachlin to represent you in the event that charges were brought against you?

MR. SINISI: Yes, I do.

THE CHAIRMAN: I think in view of your statement Monday that you were present, in view of the fact you have been present here since the hearings began, the panel ought to include you with the remaining students and attempt to consider the matter against you.

Is that understood?

MR. SINISI: Yes.

THE CHAIRMAN: Mr. Rachlin, you will represent Mr. Sinisi?

MR. RACHLIN: I will be pleased to.

THE CHAIRMAN: Your name is spelled S-i-n-i-s-i?

MR. SINISI: That is correct.

THE CHAIRMAN: I think we are ready to proceed.

PROF. JONES: I will excuse Proctor Kahn and recall Mr. Jahn, the witness I was examining--

MR. RACHLIN: Will you be calling Proctor Kahn again?

PROF. JONES: Yes, I will.

MICHAEL JAHN, resumed the stand and testified further as follows:

EXAMINATION BY PROF. JONES:

Q Mr. Jahn, I would like to show you photograph No. 18 and ask whether this is a picture which you took on January 8th in the 6th floor of Dodge Hall, outside of Room 606?

A That is correct.

Q Is this a photograph which represents the one which you took, without alteration or change?

A Yes, it does.

PROF. JONES: I introduce the photograph in evidence as University Exhibit J.

MR. RACHLIN: I have no objection to this particular picture, although I don't think Mr. Jahn can,in all candor, say he doesn't know--he knows they were not retouched. I am not suggesting they were, but they were out of his hands for such a long period of time. The developing and printing was not done by him, but I am not raising that question. I have no objection to the exhibit.

(Photograph No. 18 marked University Exhibit J in evidence as of this date.)

BY PROF. JONES:

Q Is your testimony with respect to photograph No. 25 the same?

A Yes, it is.

Q This is a picture which you took?

A This is a picture which I took.

PROF. JONES: Any question?

MR. RACHLIN: This picture I find a little confusing. Do you have 25 there?

THE WITNESS: Yes.

MR. RACHLIN: The angle you took--how wide is the corridor in front of Room 606?

THE WITNESS: I am not particularly good at guessing distances.

MR. RACHLIN: Sometimes not through intent, but a photograph can distort distance and I am suggesting that where this picture ends, there are at least six or seven feet or more on the other side of the corridor; is that correct?

THE WITNESS: I would have said about five feet.

MR.RACHLIN: What is the distance represented from the right-hand side of the picture to about two-thirds of the way where there is an apparent marking, a shadow indicating a door and the doorknob?

THE WITNESS: In other words, how wide is the hall?

MR. RACHLIN: How wide is the distance from a half inch on the right-hand side of the picture to where the shadow and the doorknob are?

THE WITNESS: I guess I would guess about 10 feet. I think the group took up about 10 feet from the wall. Maybe less. Maybe about seven feet.

MR. RACHLIN: Why don't you take out one of those pictures in evidence already and let us see if that statement fairly represents the distance?

Some of the earlier exhibits you had--

THE CHAIRMAN: Rather than have the hearings bog down now on the issue of whether or not the photographs fairly represent what went on during the demonstration, is it necessary to introduce all of these photographs?

PROF. JONES: I have been introducing a number of photographs for the purpose of accomplishing what I believe Mr. Rachlin is seeking to accomplish, that is fairly representing the situation which existed rather than being unduly selective.

Photograph No. 25 does not in the picture indicate where the wall opposite Room 606 is located and I fail to see the basis for Mr. Rachlin's complaint.

The picture simply doesn't show how much room is left to pass. It could not support a decision as to that issue.

Other pictures do indicate it and if any question is raised with respect to passageway in front of the sit-in demonstrators, it would have to be based on other photographs, obviously.

MR. RACHLIN: With that statement by Prof. Jones, I have no objection, as long as we understand this picture does not represent the entire corridor and is not meant to represent the entire corridor.

PROF. JONES: It clearly doesn't.

MR. RACHLIN: Then I withdraw the objection.

(Photograph No. 25 marked University Exhibit K in evidence as of this date.)

PROF. JONES: That is all I have of Mr. Jahn.

EXAMINATION BY MR. RACHLIN:

Q Mr. Jahn, are these all the pictures you took?

A No.

Q What are the rest?

A Ten copies of each negative I took were made up and I know that Prof. Jones has a set and that you have a set and aside from that, I don't know exactly who has.

Q Prof. Jones kindly gave me a set of pictures. Maybe I didn't make myself clear.

Are there any additional--I am not talking about copies or prints--are there any other pictures which were taken that are not represented in the set which I received from Prof. Jones?

A Yes.

Q Do you have them?

A No, I am sorry. I have not seen the set you have received from Prof. Jones, but I assume it represents all the pictures I took.

Q Can you tell us how many pictures you took?

A I would guess about 40.

MR.RACHLIN: The highest number we have is something over 40.

PROF.JONES: There were five pictures taken by another photographer. As far as I know, I turned over all of the pictures. I asked that you receive all of the pictures that I received.

MR. RACHLIN: Fine.

BY MR. RACHLIN:

Q How long were you there, Mr. Jahn?

A I was there off and on--I really couldn't say in total number of hours. I could give you an approximation.

Q I wish you would.

A 9:00 o'clock in the morning, as I walked by Dodge Hall and saw the people picketing, I went to my office in Hamilton, picked--first, I went to the news office to speak with someone. Then I went to my office to pick up the camera, came back, took a few pictures of the pickets, which I believe I included in your set.

MR. LANGSAM: Where did you take those pictures from?

THE WITNESS: The pictures of the pickets, outside the entrance to Doge were taken from a point at approximately the eastern end of Dodge Hall.

A (continuing) After that, I was there until the pickets, several--a number put down their signs and went inside the building and up in the elevator and I went up, too. I then went back to the news office on the third floor--

Q Where?

A The Columbia University News Office, to speak with someone, and I was upstairs about two or three minutes after the sit-in began.

I remained there for, I guess until about shortly before--I believe the Sundial rally was at noon. I remained shortly before the Sundial rally. I went down and took some pictures of the Sundial rally and went back to the 6th floor of Dodge for a brief period of time. Then I took the pictures I had to the University photographer to have them developed.

Q Do you develop your own pictures?

A I do, yes.

Q In your work--which of the University's papers do you normally take pictures for?

A I work for the Office of College Relations and as an adjunct to my duties there, I sometimes take pictures for Columbia College Today, the alumni magazine of Columbia College.

Q Why did you take them to the University photographer?

A Because he develops them for us.

Q Why didn't you develop them yourself?

A First of all, I am not a photographer and was not hired to be one.

Q Did anybody hire you to take those pictures?

A No.

Q Why did you take them this time--

A I took the pictures for possible use in Columbia College Today. As I said the last time I was here, while I was there I was requested by Mr. DeNisco, Proctor Kahn and later on by Mr. First to make copies of the pictures available for identification purposes.

Q Capt. DeNisco, Proctor Kahn and who was the other?

A Wesely First.

Q Is that the gentleman in the back of the room?

A That is correct.

Q When did they ask you to make those pictures available?

A Proctor Kahn and Mr. DeNisco asked me to make the pictures available shortly after I began taking pictures, which would have been right after the demonstration began.

Q Was that the reason you then took them to the University photographer?

A No. The University photographer does all our developing from my office.

Q I perhaps misunderstood you. I thought you said you sometimes do it yourself.

A I don't do any developing for the University myself. I thought you were asking am I trained in how to develop pictures, which I am.

Q I am sorry, I perhaps misled you in that respect.

In other words, it is your common practice, then to take photographs for developing and printing to the University photographer?

A That is correct.

Q Were there other persons besides yourself taking pictures?

A Yes. There was one person who I spoke with and I did not know the person's name. He said he was an SDS member and was taking pictures just so they would have a record of what happened.

I believe there was a Spectator photographer there from the Columbia Daily Spectator. I had seen one of the University photographers, Mr. Hernandez. I had seen him there, but I believe that he took the five pictures, the five pictures he took when Iwas not there.

Q Were you there when Capt. DeNisco was present in front of Room 606?

A Capt. DeNisco and I were present on the same occasions, the same times.

Q Were you present on the occasion when he walked in amongst the pickets and went to the door of Room 606?

A No, I was not.

Q You did not see that event?

A No, I did not.

Q Let's go back again, Mr. Jahn. When did you say you arrived in front of Room 606?

A I do not know the approximate time. I am afraid I cannot give you very exact times on any of this, because I don't carry a watch.

Q Do you recall approximately what time it was? The picketing downstairs went into the elevator up to the sixth floor. Do you know approximately what time that was?

A I really don't.

Q All during the time you were there, you observed people walking up and down the corridor, didn't you?

A Yes.

Q There was no effort to stop the corridor?

A When I was there, there was no effort to stop the corridor.

PROF. WOLF: Do I understand, say perhaps in terms of morning or afternoon, you can't put a time on these photographs; you can't state what time even within, say, 15 minutes or so any particular photograph was taken; is that correct?

THE WITNESS: That is about correct. I could say which ones I took some time during the morning and which ones I took at some time in the afternoon. There are a number of the pictures which I clearly remember having taken just before the sit-in broke up.

PROF. WOLF: You didn't, for example, make any record of the time?

THE WITNESS: No, I did not.

PROF. WOLF: When you started taking pictures, were you there continuously? Did you take pictures continuously from the time it started until it ended or did you leave and come back?

THE WITNESS: I left and came back.

PROF. WOLF: During the times you were actually taking pictures there, can you state with certainty of your own knowledge that no one of the students sitting in got up and went away or came and sat down?

THE WITNESS: No, I could not say. When I was with the University photographer for a period of about a half hour while he was developing some of the pictures, students could have left and returned or whatever.

PROF. WOLF: In other words, if I understand the situation correctly, your photographs may establish the presence of some person in front of Room 606 at some time or other during the day, but we cannot use the photographs to establish either the presence of a student at any particular time nor his continuous presence over a period of time?

THE WITNESS: As I said, you may use some of them, the ones I clearly recall having taken towards the end of the day, to establish that a person was there near to the time that the sit-in broke up. But aside from that, as I said, I don't recall exactly what time they were taken.

PROF. WOLF: Thank you.

THE CHAIRMAN: Any other questions of Mr. Jahn?

PROF. JONES: I would like to ask some questions, if I may, in light of the questions which have been raised.

Do you have all of the exhibits there, Mr. Chairman?

THE CHAIRMAN: I believe so.

EXAMINATION BY PROF. JONES:

Q It is my impression from an earlier question that--

PROF. JONES: What I plan to do is ask Mr. Jahn if he can make any statement with respect to the time any of these pictures were taken and hand these to him seriatim.

THE CHAIRMAN: They may not be--

PROF. JONES: They may not be in order?

THE CHAIRMAN: Yes.

PROF. JONES: This is photograph No. 36, University Exhibit F.

BY PROF. JONES:

Q Do you have any recollection when that picture was taken?

A I would say this was taken within an hour of the time that the demonstration began.

MR. RACHLIN: What time was that?

THE WITNESS: Within an hour of the time the sit-in began.

Q Photograph No. 26, University Exhibit G?

THE CHAIRMAN: If you are not sure, just say so.

A I am not sure.

Q Photograph No. 22, University Exhibit H?

A This picture was taken within an hour of the time the demonstration began.

MR.RACHLIN: 26, is it?

THE WITNESS: 22.

Q No. 43, University Exhibit A?

A This also, I believe, was taken in the morning and if I recall correctly within about an hour of the time of the sit-in began.

Q Photograph No. 41, University Exhibit C?

A I believe this was also taken within about an hour of the time of the beginning of the demonstration.

Q No. 42, University Exhibit B?

A This is the same case. This picture shows when Dean DeKoff was addressing the students, which would have made it within an hour of the time of the beginning of the demonstration.

Q No. 21, University Exhibit I?

A Exactly the same, within an hour.

Q No. 40, University Exhibit D?

A That is probably about 11:30, within about an hour from the time it began. I took the greatest number of the pictures at that time in the morning.

Q No. 39, University Exhibit E?

A That is the same case.

Q No. 25, University Exhibit K?

A I don't recall.

Q No. 18, University Exhibit J?

A This one was taken in the afternoon some time, probably between 1:00 and 2:00.

MR. RACHLIN: What is that?

THE WITNESS: No. 18 was taken in the afternoon some time, some time between probably 1:00 and 2:00.

THE CHAIRMAN: With the exception, then, of Exhibit J, which you indicate as having been taken in the afternoon, Exhibits G and K, about which you are unsure, all of the other photographs are morning photographs?

THE WITNESS: That is right.

THE CHAIRMAN: Any further questions of Mr. Jahn?

(No response.)

THE CHAIRMAN: Thank you, Mr. Jahn.

(Witness excused.)

PROF. JONES: I would like to call Dean Alexander.

JOHN W. ALEXANDER, called as a witness, testified as follows:

EXAMINATION BY PROF. JONES:

Q Please state your full name and your relation to the University.

A John W. Alexander. Formerly--at the time of this incident, Associate Dean at Columbia College for Student Affairs. I since have left the University.

THE CHAIRMAN: Before you continue, may I ask again whether Anthony Papert and Edward Spannaus are here?

MR. SPANNAUS: Here.

THE CHAIRMAN: Mr. Papert is not yet here.

BY MR. JONES:

Q At the time that you were associated with the University, Dean Alexander, what were your duties, generally?

A Associate Dean for Student Affairs and in charge of general area of relations with the college with students, other than of an instructure nature, commenting on academic standing and sort of original first jurisdiction for student disciplinary matters and student living, dormatory conditions and so forth.

Q Will you tell us what happened on February 8th that related you to the demonstration which is the subject of this hearing; how did you first learn about it?

A I was in my office in the middle of a rather heavy day, because it was the first day of classes and our office was filled outside with students beginning the term that was getting underway, or finishing the one that was just over.

I knew of the demonstration. I had been hearing the shouting from Hamilton Hall all morning. I knew it was underway, the outside picketing, and I had been alerted to stand by in case of any need to come to the scene, in case there were any violations of University regulations in regard to demonstrations and picketing.

It is my task not to control such events, but I am quickly called to the scene to speak to students who may be involved and to represent the University academic authorities,as distinct from the proctor and the security officer.

I had a call from Dean Truman, who was in, as I understood it, Vice President Chamberlin's office, and he had been requested by the Vice President to ask me to go to the scene--it was stated there were some students sitting in on the 6th floor of Dodge.

Q What time was that?

A I really don't know. It was in the middle of the day. I didn't have any idea what time it was. I reconstructed it since. It was probably around 11:15, 11:30. I didn't look at my watch. All I could think of was to try to get back as quick as I could to take care of the people waiting to see me. I think it was 11:15, give or take.

I went to Dodge Hall and took with me one of the Assistant Deans, Irving DeKoff, so there would be two of us there to know or recognize students by name and simply to support me, so we would make it clear we were there as academic authorities, the two of us. So we went to the scene and I found the group sitting in the front of this room, the 6th floor of Dodge Hall. I went up to them and they were seated on the floor in a group, fairly tightly grouped together in front of a door.

One of them said he was a spokesman for the crowd. I addressed them, not knowing whether there was a spokesman. I addressed them and identified myself as being my name and title, and said I had been requested by the Vice President to come here and to ask them please to disperse and not block the door so the placement officer, the people who use the office could have access to it.

I stated it was contrary to University procedures to hold a demonstration this way and that they had all the right in the world to picket and demonstrate and state their views, but it had been clearly stated by the President that this exceeded the limits of freedom, in that it interfered with other people and interfered with, in this case, access to a door of the University office.

(continued on page 168)

I then asked them to identify themselves which they refused to do and I stated I was a University officer acting in the line of duty, having been requested to come there by the vice president and that I requested them to identify themselves and it was a requirement of the College and the University that they identify themselves properly to the University authorities.

I also stated to place themselves physically in this manner in front of the door could only be viewed as physical coercion and I stated we did not intend to move them physically, that if there was physical force being used, it was their presence and that it would have taken physical force to take them out of the way and we were not going to resort to it and I wanted it understood and made clear they were the ones resorting to physical coercion and this is not the way to settle differences in the University community.

I stated I felt this was in a sense a threat to the whole stability of the University because it is a community and must rest on consent and not rest on coercion.

Their simply being there physically, to my mind, was really undermining the whole stability of the University community which cannot resort to coercion without destroying itself.

One man spoke for the crowd. I had never seen him before. Actually at the time I only recognized one of the students whom I knew by name. Few of the faces were familiar to me. Actually most of them I didn't remember having seen before. There were two young ladies among the group that I had never seen before, that I did not know. One other college student in addition to the one I knew, Dean De Koff told me who he was and I remembered then having seen him before by name.

Q In talking to the students, did you say anything about the possibility of discipline?

A I did. I said that they were taking upon themselves the risk of being disciplined for a very severe offense of interfering with the University office and with failing to respond to the request of the University officer in the line of his duties and finally for refusing to identify themselves.

Q You say you were able to identify one of the students?

A At the time, yes, I knew one by name.

Q What happened with respect to that student?

A This was Anthony Papert and I spoke to him--

THE CHAIRMAN: Excuse me, Dean Alexander.

Will the record show that Anthony Papert is here now, if he is?

He is still not here.

A I knew him by name. He was in my office in fact, last week and I met with him on other occasions. I knew him. I went to him and said, "When this business is over, would you please come to my office?"

Q You say that Dean De Koff was with you?

A Yes.

Q Did he say anything in your presence that related to any particular student?

A Yes. He pointed out to another student and said "That is George Gruenthal," and I remembered having seen him before.

Q Did he say anything to Mr. Gruenthal?

A He did. I did not see him directly speak to him. He told me he did.

Q Anything else happen on the sixth floor?

THE CHAIRMAN: Excuse me once again. This time the record can show that Mr. Papert has just entered the hearing room.

MR. PAPERT: My apologies, Prof. Berger.

A (Continuing) The group had a spokesman or he said that he would speak for them and this was Mr. Dillon whom I had never seen before and only known his name by his presence here.

He spoke for the group and stated that they understood what they were doing, that they knew they were acting against University procedures and regulations and said they were doing so on grounds of conscience and principle and gave the story of their opposition to the CIA and I stated whether I did or did not share their views with CIA, this was not the point, that the point was their disruption of University authority.

When I asked them to identify themselves they said they would not and with him speaking for them, because actually they represented all the students of the University and they should remain nameless, was because they were acting for all students.

He did say that they knew they were risking disciplinary action by being there.

Q How long did you remain on the sixth floor approximately, Dean Alexander?

A Approximately 15 minutes. I don't think it was any more than that. One other thing I did note. One lady who I recognized having seen around on Mr. Clark's staff, tried to get into the door. Apparently she had a message for the men who were inside or I presume they were inside, I don't know. I didn't see them, tried to go through and they wouldn't let her go through. She wanted to give a message. She tried to get through. She couldn't have gotten through without stepping on them and Mr. Clark again asked if she could go through, would they permit her to go through and they said no.

Anyone who would have gotten in would have had to step on them, they were so close.

Q That concludes your recollection with respect to the incident on the sixth floor?

A Yes.

Q Tell the panel what further events happened during the day relating to this sit-in demonstration which you personally observed?

A I went back to my office and some time in the course of the afternoon--here again I don't watch the clock while I am working--there was too much going on that day, the outer office was filled with students and there was a bit of a crowd moving in on the office outside and I went out and spoke to my section and here was quite a group of people and some of the faces I recognized as having been in this sit-in group and Papert was there and said he had come to see me and I said, "I am in the middle of a busy afternoon, I have too many people that were waiting a long time to see me and I couldn't see him and to make an appointment with my secretary."

He said the whole group wanted to see me. I said, "It can't be a mass meeting, I want to talk to you personally."

I must say that my recollection of precise conversation at that point is not very clear because I was a bit flustered. It was not a usual situation. I was a bit unnerved by it. I felt deeply upset.

Q What happened when you refused to meet with the group?

A I then went on about my business and I was given a piece of paper. I don't remember whether one of them handed it to me or it was given to my secretary, but a piece of paper was put in my hand, a piece of yellow legal sized paper.

Q I hand you a piece of paper and ask you if that is the paper that was handed to you?

A This is it. This piece of paper was given to me and it is stated: "We the undersigned accept mutual responsibility against the charges against Tony Papert and Gruenthal.

Gruenthal is mentioned because De Koff had spoken to him and told him to come see De Koff.

I gave the piece of paper over to one of my assistants and said to please look these people up, their names in the University Directory and we put some notations in the left in pencil and these notations that are here in pencil next to the group of names were put in by a clerk in my office to indicate the faculty or school to which the student was registered.

I made a little tally myself, my own writing of identifying the sources of registration. There were nine college students listed here and two college students up above, Papert and Gruenthal. One person came in and asked for the paper later and said he wanted to add his name to it. This is the name over on the right, Richard Sober.

Q What is the notation at the top?

A This is simply in my handwriting. This, I believe, came in the form of--I don't know. It was either a communication from my secretary or from Dean Truman.

Q In any case, it was not on the paper as the paper was handed to you?

A No. I made a notation that another student came in and stated, orally, not in writing, that he wanted to be together. "Also accepted responsibility, Michael Milzer."

Q Since the paper has been marked by you and by others since you received the paper, I would like you to please read the paper to the panel in the form it was when you received it so there will be no confusion as to what was in the original document and what was added later.

MR. RACHLIN: If it will simplify the matter, I don't mind the whole paper going in. I am sure the Dean would not have put anyting on the paper--

PROF. JONES: I think it is self-evident what was added later.

MR. RACHLIN: Either way is all right.

THE CHAIRMAN: Why don't we introduce it then?

A All the entries in pencil were added later plus the address of one student here, plus the entry in ink, "Barnard" besides the name of one of the students and plus this statement "Not listed in student directory." I put this in simply because we couldn't read the name and was looking up the wrong name.

PROF. JONES: I will introduce the paper in evidence as University Exhibit L.

(Document marked University Exhibit L in evidence, as of this date.)

BY PROF. JONES:

Q Dean Alexander, I would like you to identify this document for me.

A It is the Columbia college student handbook.

Q This is a publication of the University?

A Yes, it is an official publication of the College.

Q And it is distributed to whom?

A It is given to each freshman on his entry by hand. It is handed to him when he registered during freshman week and it is placed in the office of the Registrar and each student is to pick one up at registration, each upper classman.

Q Are the students told anything about this handbook?

A It has been my practice for a number of years and as long back as I can recall to state orally to the incoming freshman class that we cannot read them word by word the handbook or the bulletin but the student handbook--it is their responsibility to know what is in the student handbook and know what is in the Columbia college bulletin and they are held accountable for the regulations stated there.

Q Would you please turn to page 75 of the handbook? Pages 75 and 76 deal with what problem, what topic?

A This is the heading of "Discipline." I wrote the first draft of this myself. We spent quite a few weeks preparing this. I know it is a minor footnote but since this is not a formal court of law, I must say for the record, for information of those involved, this statement was presented to the American Civil Liberties Union Committee on Academic Freedom for their consideration and comment before we printed it.

In preparation, we wanted to be sure it contained all the considerations possible in the interests of the responsibility of the University for discipline and concerning the University for student freedom and freedom of the academic community of Columbia.

We asked for their comments and it was prepared in consultation with them. It is an attempt to spell out for the college students the way in which we think in general terms discipline of offenses have to be defined.

PROF. JONES: Mr. Chairman, since this is a publication of the University and more specifically of the College, it might well be that the panel could take official notice of the publication without being introduced in evidence.

MR. RACHLIN: I have no objection.

PROF. JONES: In order to insure the record is complete, I introduce the handbook in evidence as University Exhibit M.

THE WITNESS: May I state one other thing in regard to the discipline? I used this reference to coercion when I spoke to the students that day with President Kirk's letter of February 8, 1965 in mind. This is a letter to the University community--

MR. RACHLIN: What date?

THE WITNESS: February 8, 1965. This was when the President made a statement with regard to University policy concerning citizens and demonstrations and coercion is something that is specifically stated as being--a disciplinable offense in effect. I recognized that as coercion as I think it was.

(Handbook marked University Exhibit M in evidence, as of this date.)

Q Is this the letter to which you are referring?

A Yes.

MR. RACHLIN: I have no objection to its admission. May I see it?

PROF. JONES: Unfortunately I have only one copy of this. I thought a copy of this was attached to each letter that went to the students.

MR. RACHLIN: I have no objection to its admission, Prof. Jones.

PROF. JONES: University Exhibit N.

(Letter dated February 8, 1965 marked University Exhibit N in evidence, as of this date.)

Q Dean Alexander, the letter of the President to which you just referred, was this brought to the attention of the student body in any manner?

A It has been posted on a number of bulletin boards and has been announced in the Spectator--

MR. RACHLIN: We will concede the students have had notice, at least sufficient notice to put them on notice as to the contents of that letter.

PROF. JONES: I will nonetheless introduce in evidence an issue of the Spectator of December 9, 1966 which contains the policy statement on page 2 as University Exhibit O.

(December 9, 1966 issue of the Spectator marked University Exhibit O in evidence, as of this date.)

MR. RACHLIN: Is that the same as Exhibit N.

PROF. JONES: Yes, as published in the Spectator.

I have no further questions of Dean Alexander although at some point during the recess I would like to confer with the panel on a matter that relates to general procedures in which I would like some guidance but for the moment, I have no further questions of Dean Alexander.

EXAMINATION BY MR. RACHLIN:

Q I take it, Dean Alexander,--I haven't seen that document--when the students brought to you what we have called University Exhibit L, I assume you understood that was a voluntary submission of responsibility and identification?

A Yes.

Q So that then in a way without the threat of any further coercion, they at least identified themselves to you?

A I had no idea though at that time who was there. This was after the fact. I had no idea whether these were the people there or not or whether anyone who was there didn't identify themselves. The crucial act of not identifying is on the scene. They did voluntarily present themselves afterwards, yes. This seems to have been because I had the name of one.

Q The others didn't have to identify themselves?

A No, they didn't.

Q As a matter of fact, were you aware at the hearing the other day when I was cross-examining Mr. Clark and I was asking him whether he could recognize any of the students present, the students insisted on identifying themselves so the University would not have to go through the obvious difficulty of identifying people.

In other words, what I am getting at you understood all along this was not a frivolous activity on the part of the students?

A They stated clearly their reasons for doing it and I understood them quite well.

Q And you understood they were willing to take responsibility for what they did?

A Yes.

Q Dillon said so?

A Yes.

Q And what's more, they did come to you voluntarily with information, the names?

A I am not so sure they would have come unless we had identified the two.

Q You have no assurances they wouldn't either?

A Right.

PROF. JONES: It seems to me counsel is asking for conclusions of the witness and he is getting conclusions of the witness and he can hardly complain.

MR. RACHLIN: That is true.

Q In any event, they did come? Whatever the motivations were they came voluntarily?

A Apparently others than they. Others came who were not associated. We were still unclear with whom we were dealing and couldn't identify the specific accountable ones because people put their names on there that were not present, so it isn't a list of those who were there.

Q You could hardly complain about that.

A I don't want to say complain, because this is no pleasure for anybody.

Q Let's go back to the beginning of time on February 8th. The first you knew that the students had moved from the front of Dodge Hall up to the sixth floor was a telephone call that you received?

A Yes.

Q Will you tell us what you said and the other person on the telephone said to you?

A I can only approximate or paraphrase. Dean Truman called me and said he was in the vice president's office and that a group of pickets have moved from the picket line to a sit-in demonstration on the sixth floor of Dodge Hall. The vice president wanted me to go over and seek to identify and to represent the academic authorities of the University in asking them please to leave. I said I will.

Q That was the substance of the conversation?

A That was the substance of the conversation.

Q Then this was approximately at what time now?

A Let's say at 11:15. I could be in error 15 minutes.

Q Did you go fairly promptly?

A Yes. I got Dean De Koff, we put our coats on and went flying out the door.

Q You arrived there a few moments later?

A Yes.

Q How many students did you see at that time?

A I was upset, deeply upset inside. I am not too sure. I felt this very strongly, very emotionally. It wasn't a pleasant thing to do or to encounter. 15 or 20. There were people milling in and around. There was quite a crowd but sitting down roughly 15 to 20.

I was so confused, I did not count.

Q You have described to us your recollection of what you said to the students: Do you recall any comments that Dean De Koff made, in your presence?

A He reiterated about what I said and he emphasized again the idea of "You know you can risk serious disciplinary action by continuing to fail to identify yourselves and by failure to move."

Q Didn't he say something which you yourself did not want to associate yourself with?

A Simply to be very precise, I was quoted in the student paper as saying they would be dismissed from the University. I did not say this.

Q I wasn't asking what you had said. Didn't he say something in your presence which you did not wish to be associated with?

A No, he didn't say it in my presence. I heard later that he had said--I asked him, I didn't hear him say it. I asked him later who said they would be dismissed. He said, "I told them they would risk serious displinary action, possibly dismissal." This is what he told me afterwards. I did not hear him say it.

Q Didn't you hear him make some comment to the effect he hopes they have better luck in their next

University?

A I don't remember that.

Q What is the closest to that that you do remember?

A I don't remember.

Q I take it you indicated you were too upset to recall all the things that took place?

A That is right. Some of the students are laughing. I felt sad.

Q I am not questioning you and I don't associate myself with anyone that laughs. One of the things you said that I would like to discuss with you--let it go.

You knew, of course, why they were there. There was no mistake. They were there solely because of their feeling about the CIA?

A Yes.

Q That, of course, was prior, a day or two prior to all the news about the CIA. Had you and any of the Deans been consulted about this problem of whether to permit the CIA to recruit students for future employment?

A I wasn't consulted until after the thing was said. I was asked to come to a meeting with Mr. Low, assistant to the vice president, the week prior in which procedures and so forth were discussed and our careful task in all sets of events is to ask the Proctor if he has explained to the students what the limits are and what the defined picketing area shall be.

We always provide the opportunity and even protect the pickets which we have done on many occasions.

Q Then I take it you were not asked your view whether the CIA should or should not be permitted on campus?

A No, I wasn't in any official way.

Q Was there a meeting of any of the Deans to your knowledge on the subject?

A Not on this particular subject, not to my knowledge.

Q Do you know whether there was a meeting of the faculty on this subject?

A I have no idea. I doubt it.

Q This leads to the point that I was coming to. You made the comment and I wrote it down, that the University must rest on consent and the actions of these students was coercive. Is that right?

A Yes.

Q What was the nature of the consent of the students and faculty in permitting the CIA on the campus?

PROF. JONES: Objection. Dean Alexander stated what he said to the pickets on the date of February 8th and those are facts which relate to the incident of February 8th. Counsel here is asking the witness to go into areas that have nothing to do with the events of February 8th, merely asking him to form conclusions relating to his beliefs.

THE CHAIRMAN: Also, Mr. Rachlin, I think that question was argumentative in its form. He has stated already in answer to your questions his knowledge as to discussions prior to the scheduling of the interviews on February 8th and I see no reason to go into that further.

BY MR. RACHLIN:

Q Now--

A In terms of consent, anybody that lives in any institution--

PROF. JONES: No.

Q The first charge in the letter which I have, the first charge against the students is that they were interfering with a University's activity. I stress the word "University." What made this act a University activity?

PROF. JONES: These are not questions

appropriate for cross-examination. These are arguments directed to the soundness of the charges brought against the students. I have no objection to him making the arguments but they are not appropriate questions for cross-examination.

MR. RACHLIN: I will rephrase the question.

Q What University activity is referred to in the charges against the students?

THE CHAIRMAN: I think that is a fair question.

A Access to the office which is a University office and two people that I observed tried to get into the room and couldn't.

Q Couldn't, that is, without moving in amongst--

A Stepping on them.

Q Who was the other person?

A Mr. Clark asked them to get away so he could get in a message or this lady could get in.

Q Are those the two people you are referring to?

A Yes. I asked them to leave.

Q You didn't try actually to go into the door?

A No. I asked them to leave so that the door could be reached. I didn't try to break through. I told them we would not do that.

Q What University activity which was involved that required access to that door?

A I think anybody has a right to go to a door in his office.

Q Whose office was it?

A It was an office in the Placement Office, University Placement Office.

Q The Placement Office is across the hall?

A The whole area is Placement Office.

THE CHAIRMAN: Is there any dispute or question, Mr. Rachlin, to the fact that interviews had been scheduled to be held within Room 606?

MR. RACHLIN: None whatever. What I am questioning, this was not a University activity.

PROF. JONES: That is a legal question and has no relation to the testimony given by this witness. Mr. Rachlin may argue to his heart's content whether this is or is not a University activity. This witness' opinion on that matter has no relationship to that conclusion whatsoever.

MR. RACHLIN: This gentleman, Dean Alexander, who I respect, has talked about nature of consent and I am trying to find out what made this a University activity. It is obvious that nothing made it a University activity--

THE CHAIRMAN: Mr. Rachlin, Mr. Clark has already testified as to the arrangements that preceded the scheduling of the interview for inside Room 505, Dodge Hall. Dean Alexander has testified as to what he saw outside Room 606, Dodge Hall, during the time that those interviews were scheduled.

I think it is a question that this panel will have to consider after these hearings end as to whether what was going on within Room 606, Dodge Hall, [illegible] a University activity, but I don't think that we can get any testimony other than that already before us as to that, at least not from Dean Alexander.

Q Dean Alexander, after the events transpired and you went back to your office and either before or after the students arrived with this University document L, did you discuss this with the vice president or anybody else?

(Continued on page 191.)

A Yes. I discussed it with the vice president. I discussed it with Dean Truman. I discussed it with Dean De La Quadri of the School of Social Work. I discussed it with Dean Sullivan--it was a question of how to proceed because the University procedures when students have violated regulations is to leave the handling of such matters to the respective Deans. It is their responsibility of the powers delegated by the president and the president has the power by statute to discipline when necessary.

It was decided the normal procedures would prevail and that those students--that this statement would be sent to the respective Deans of the faculty. This is why we had to identify where they were from and Xerox copies of this were sent to each of the Deans and it was agreed each dean should have his own hearing on the matter and I told Dean Truman of this communication which was presumed to be an association of these students with this incident and our normal procedure is to write a letter stating what the charges are and inviting the students to a hearing and advise him to bring his advisor if he wishes to and also advising him he may bring any witnesses he wishes to and the students were asked to respond in writing to the Dean's secretary for an appointment and it is my normal talk under such events and any disciplinary event to work up the charges and investigate what evidence there is and present it to the Dean in a sense, as he was to hear the charges.

I told the other Deans what had transpired.

Then over the weekend--I immediately sent the letters. I guess it was the next day. I don't remember the date. The date is on the letter.

Then over the weekend the decision was changed. Apparently the president decided to handle the matter in this way.

Q You mentioned a number of gentlemen with whom you discussed this including several Deans.

When you spoke to them, did you tell them what you had seen and what you observed?

A Yes.

Q Was that true of all the four, five or six people you spoke to subsequent to the events?

A I guess so. I am not sure what you mean.

Q I wanted to know whether the conversation was approximately the same with each of the gentlemen with whom you discussed this event.

A I have no idea, I don't remember. I guess I did.

Q When you saw this secretary to Mr. Clark start as if she was trying to go through, did you see any one of the students put a hand upon her in any way?

A No.

Q So there was no actual--except for the closeness of their sitting together, there was no actual physical force beyond that fact, it was there, Dean?

A No.

Q In other words, nobody threatened her by word of mouth?

A No.

Q Do I state accurately what you said earlier that the only way she could have gone through was if she had presumably stepped on somebody?

A Yes.

Q There was no indication they would have stopped her if she tried to go in?

A No.

PROF. WOLF: May I just briefly ask you a few questions concerning the sections on discipline in the handbook. On page 75 there is a list of categories of discipline, disciplinable actions and then on page 76 the next to the last paragraph it says "Punishment for the offense does not follow inexorably well defined rules."

I take it in your capacity with the college you have taken part in many disciplinary hearings and actions?

THE WITNESS: Yes.

PROF. WOLF: Is it your observation that in deciding on the precise punishment to be imposed for various offenses that the college, as it were acts in a formulaic way and applies a specific punishment for a specific breach or is it rather the case that it takes into account motive, background, context and so forth?

THE WITNESS: Yes.

THE CHAIRMAN: Which is it?

THE WITNESS: It does take into account motive, degree of offense, whether there have been any previous offenses, whether the student is on probation or warning with regard to that particular offense.

PROF. WOLF: For example, there might be two cases or there are two cases both of which in each the students refused to identify themselves and different punishments were metered out because of the differences of motives involved?

THE WITNESS: Yes.

PROF. WOLF: Have there been matters in which differences of policies, what have you, have arisen?

THE WITNESS: Yes.

PROF. WOLF: Has that fact been taken into account in determining the nature and the extent of the punishment?

THE WITNESS: Yes.

PROF. WOLF: My purpose is simply to establish according to the customary procedures by which Columbia has handled these cases in the past, it would in the past have been relevant in the hearings that you have taken part in to introduce such considerations as part of what the Dean or others would have recommended for punushment?

THE WITNESS: Yes.

THE CHAIRMAN: Any other questions of Dean Alexander?

BY PROF. JONES:

Q I would like to go into briefly the question of discussions you had with the various Deans about what happened in Dodge Hall. I take it it was after you described what you had observed on the sixth floor of Dodge Hall to the various Deans, including Dean Truman, the letter which was the subject of discussion at the last session was drafted by you?

A Yes. The letter was written by me after this discussion and so that the others, the Deans of the faculties might know what the charges were against the college students so they may know in a sense therefore what were the charges against the others, I sent them copies of the letter which I had written, to each of the other Deans.

Q Was this letter intended to be an adjudication of guilt or a statement of charges?

MR. RACHLIN: I will object to that question. The letter speaks for itself or it doesn't.

THE CHAIRMAN: I think that objection is sustained, to be formal.

PROF. JONES: No further questions, Mr. Chairman.

THE CHAIRMAN: Dean Alexander, just one question.

Of your knowledge, do you know whether the statement appearing in the Columbia College

Student Handbook also appears in the student handbooks, graduate faculties and School of Social Work and General Studies?

THE WITNESS: Not to my knowledge.

THE CHAIRMAN: It does not?

THE WITNESS: Not to my knowledge.

MR. LANGSOM: When discussing what the students did, you used the term "physical coercion." I just wanted to make sure it was clarified. Am I right in understanding you don't mean people threaten violence?

THE WITNESS: Physical presence there. This is a matter of interpretation, I admit. Physical force would have been needed to move them and to have gained access and for my request to have been carried out would have been carried out physically.

I have no authority except the word and the word was standard at that point.

BY MR. RACHLIN:

Q You knew that they did leave later, didn't you?

A Yes.

Q Physical force was not required to get them to leave?

A There was coercion because the statement was signed. They would not leave until a formal statement had been signed and this I interpret as coercion.

Q When the people inside the room agreed to leave, they left?

A They were forced to leave by their presence.

Q Then there was not mere stubbornness on their part, there was a factor involved which was the dominant factor in deciding whether they would leave or not?

A Yes, they achieved their objective.

Q When the factor inside the room left, the students left?

A Yes.

THE CHAIRMAN: Dean Alexander, all of us on the panel are grateful to you--

MR. MENT: May I ask a question?

THE CHAIRMAN: I am sorry, I thought we all had. Mr. Ment.

MR. MENT: When you mentioned when you were up there talking to the students you told them what they were doing involved various breaches of regulations?

THE WITNESS: Yes.

MR. MENT: I wonder if you could repeat the various things you told them.

THE WITNESS: I stated it was interference with University activity and by blocking access to a door in an office, they were obligated to identify themselves to a University officer when requested to and they were obligated to respond to the request of the University officer in the line of his duty.

MR. MENT: Did you tell them at that time where these things were written as rules or did you read the rules, the exact rules to them?

THE WITNESS: I did not. I didn't in the classical sense read the Riot Act. In a literal sense I did state them orally but I did not give the page and reference of the law.

MR. MENT: That is all.

DEAN SULLIVAN: For sake of information, Dean Alexander said he has no knowledge whether or not the statement on discipline appears in other bulletins of the University. The statement that occurs at page 75 of the Columbia College Handbook is an excerpt from the statutes of the University on discipline and a similar statement appears on page 369 of the bulletin of the graduate faculties.

MR. LANGSOM: Dean Sullivan, I imagine you mean specifically the first paragraph, not the rest.

DEAN SULLIVAN: No, it is not the various items. They expect graduate students to be masters of exegesis by the time they get their baccalaureate degree.

THE CHAIRMAN: Dean Alexander, we know how trying this week has been for you since you are planning to move to your new office and we thank you very much for the time you spent.

We will now recess for 15 minutes.

(Short recess taken.)

THE CHAIRMAN: Prof. Jones.

May we have quiet, please?

PROF. JONES: I would like to call Dean De Koff.

DEAN IRVING DE KOFF, called as a witness, testified as follows:

EXAMINATION BY PROF. JONES:

Q Please state your full name and position with the University.

A Irving De Koff. I am assistant Dean for student affairs at Columbia College.

Q Will you please describe to the panel your activities in relation to the student demonstration on the sixth floor of Dodge Hall on February 8th?

A I accompanied Dean Alexander at his request to the sixth floor of Dodge Hall about 11:30 on February 8th.

At that time we found 15 or 20 students sitting on the floor in front of Room 606.

I waited for Dean Alexander to complete his talk with the students and upon conclusion of his remarks and the remarks of the student spokesman Mr. Dillon, I believe, I felt it necessary to make the students fully aware of the possible consequences of their actions and as such, I reiterated that by interfering with the University--that in interfering with a University function and failing to respond to a legitimate request of an official of the University and refusing to show their identification, that they were all subjecting themselves to possible severe discipline. I also added to that to give them a sense what I meant by severe discipline, this meant the possiblity of suspension or even worse.

During all this time the students merely listened. They said nothing in response to what I had to say.

We were all very sad about what was happening there. We have seen these things before and I added as my last remark to the group that it was a shame that some of them would have to be looking for another institution at this time of the year, that it would be difficult or something to that effect, I don't recall exactly.

Q Did you identify any of the students in the group?

A I recognized one of the students, George Gruenthal and I did mention to the group, as I recall now, that we did recognize some of the students in the group and that we would be in touch with those students.

Q Did you ask any of the students to make an appointment with you?

A Later that afternoon at about 3:30, most of that group, I recognized many of the faces, I don't recall whether they were all there or not, but many of them were in Room 202, evidently there to make a simultaneous appointment with Mr. Papert to see Dean Alexander.

After Dean Alexander spoke to them and after I asked them to move out from behind the screen where they were interfering with the work of the secretaries and I saw Mr. Greunthal and asked Mr. Gruenthal to make an appointment to see me,which he did.

Q Was this before or after the letter was submitted?

A This is all before the letter was submitted. Mr. Gruenthal reluctantly came to my desk--

MR. RACHLIN: I object to the word "reluctantly."

A I would like to qualify "reluctantly"--

Q Please describe what happened as you observed it.

A I asked Mr. Gruenthal to please make an appointment with my secretary at that moment and he did not move.

I said, "Now, George."

George then moved.

Consequently I used the word "reluctantly." He then came to make an appointment, but did not want to make an appointment until he knew when Mr. Papert has his appointment. He wanted to consult with his group.

I said, "You will make an appointment when I

I can see you," and I made an appointment for him.

After this I asked all the students who had no business in that office to leave the office since we were busily engaged in registration, change of program and they were causing a great deal of confusion.

They then went out into the hallway and sometimes afterwards, I don't know exactly how long, came in with a letter for Dean Alexander.

Q This is the letter which all of them signed accepting responsibility and so forth?

A Yes, it is.

PROF. JONES: I have no further questions of Dean De Koff.

EXAMINATION BY MR. RACHLIN:

Q You mentioned a moment ago you made an appointment for George Gruenthal. I am not sure I understand what you mean, made an appointment for him.

A Simply George wanted to time his appointment at the same time that Mr. Paper was having his appointment.

I wasn't quite sure what the reasons were,but I said, "You will make an appointment at the time I can see you, not when you think you can be here."

Q When you say you made the appointment for him, that is, you put him down in your appointment book?

A I told him when I would be available and asked him if it was all right with him and he said yes, and his name went down.

Q Did you actually keep that appointment?

A I did and he did.

Q Was there anybody else involved?

A No.

Q What time was it that you and Dean Alexander went to Dodge Hall?

A Approximately 11:30.

Q I take it you went up the elevator?

A Yes, we went up the elevator.

Q As you got off the elevator, you saw the students?

A That is correct.

Q And they were gathered around Room 606?

A They were sitting in front of the door of Room 606.

Q How many of them were there?

A 15 to 20, approximately.

Q They all couldn't have been sitting in front of the door.

A Obviously, but they were all sitting in front of the area of Room 106 with approximately four, five or six in front of the door.

Q How wide is the door?

A Probably three feet wide.

Q So it wouldn't be possible for 15 people to sit in that area, obviously.

A Obviously.

Q How many of them were sitting on one side of the door and how many were sitting on the other side of the door?

A I think that is irrelevant.

Q It is not for you to say what is irrelevant. Prof. Berger will decide that question, sir.

A All right.

THE CHAIRMAN: I must say that I share Dean De Koff's doubts.

MR. RACHLIN: I have a duty to these students to show the questions of who was blocking the door and this witness has an obligation to testify as to who was blocking the door.

I might be standing downstairs in sympathy. That doesn't necessarily make me blocking the door. The question here is partly a factual question. Regardless of the desire of the students to be heroes and all to participate as a lawyer I have an obligation to show who was blocking the door and I want the witness to testify to that.

THE CHAIRMAN: Are you planning, Mr. Rachlin, to delineate between those students in front of the door and those students to one side or the other side of the door?

MR. RACHLIN: That is a serious possibility and as an attorney I have an obligation.

THE CHAIRMAN: If you are planning to proceed that way, continue your questioning.

Q How many students were in front of the door?

A I can only approximate. There were approximately five or six in front of the door, directly in front of the door in layers, so to speak. There were three--

Q You mean up and down?

A In rows. There were three or four to the left of the group as I faced them and the bulk, the remainder of them were to the right of the door.

Q So you say there were approximately five or six who were directly in front of the door?

A Approximately.

Q In layers, that is extending out from the door?

A Rows. From the door there was one, two--

Q How many rows?

A Approximately three.

Q Did you see any of the students lay any hands upon anybody?

A No, I did not.

Q Did you hear any of the students threaten anybody with physical violance?

A No, I did not.

Q Could you please repeat for us what it was you heard Dean Alexander say?

A I think that is rather difficult. I can only give you an approximation.

Q Do the best you can.

A Dean Alexander, when he came to address the group, he identified himself. Then he introduced me, identifying me. He then asked the group to please move away from the doorway and permit the University to continue with its normal functioning and that by their doing so they were violating the University regulations and he said he was not going to force them to do so if they did not want to move, he was not going to force them and he followed this and there was no response to this by asking them in that case would they please identify themselves and no response to identify themselves and upon the completion of his statement to the group, most of the people in the group asked Mr. Dillon if he would ask the spokesman for the group to respond to Dean Alexander's request.

Mr. Dillon stated at that time that he was speaking for all the students of Columbia University and that they were all fully aware of what they were doing, that they had intended to interfere with a University function and it was their expressed intention to bar the entrance of anyone going in to see the CIA man.

He also went into a long discussion on the immorality of the CIA and the terrible crimes against humanity they had perpetuated and he also stated they were all refusing to identify themselves and they were acting as a unit, as a group.

Q Did Dean Alexander ask any of them individually to identify themselves beyond the statement which you have just made concerning what he said?

A I don't recall that he did.

Q D idn't Mr. Dillon say that "We are representing the best interests of all the students"?

A It is quite possible. I think he also added he was representing all the students of the University and their best interest or something to that effect.

Q What was it the Dean said to them, Dean Alexander, what was it that Dean Alexander said to them concerning the possibility of discipline, do you recall?

A I do not recall Dean Alexander mentioning discipline to them and felt compelled myself to bring this matter up at this time to make sure that the students were completely aware of what the possible consequences of refusal to obey these rules and regulations were.

Q Can you tell us to the best of your recollection what it was that you said?

A I just finished telling you what Dean Alexander said.

Q What you said.

A To the best of my recollection, I remember stating that I wanted the students to be fully aware of the fact that by interfering with the University function and by refusing to identify themselves--I am not quite sure and I really will hesitate as to whether I definitely stated that failure to respond to a request of an official--I don't recall whether I stated that or not. It may have been an afterthought as I reviewed my regulations.

Those two items I did specifically indicate.

Q When Prof. Jones asked you a question a few moments ago, you said--I wrote down your words exactly, "It is a shame that some ofyou would have to be looking for another institution."

Those are your words?

A That is the last thing I did say.

Q When did you say that?

A That was the last thing I said.

Q As you left?

A No.

Q As you were about to leave?

A Just before I left.

Q What did you mean by that statement?

A I mean to show them that the consequences of their actions were very, very severe and it was in my mind a terrible thing to see students making martyrs of themselves to the point where they could possibly be suspended or dismissed from the University.

I felt poignantly and deeply.

Q D id you have any students in mind of the group that would have to be looking for any other institution?

A As a matter of fact, yes. There is one gentleman whose name I couldn't recall at the time who I had spoken to personally. The gentleman who has difficulty with his vision. I couldn't remember his name. I think it is Richard Sober. The mere fact that I had been in communication with him and realized the difficulty that he as an individual is having, I felt very terrible that this particularly was going to happen to him becuase he is a delightfully sensitive and warm human being.

Q You mean that he was going to be expelled?

A He might be. These are all possible consequences and I was not threatening anyone with any dismissal or suspension or anything like that.

Q Your words were "Some of you would have to be looking for another institution"?

A That some of you might be looking.

Q You didn't say that. I repeated it twice.

A You can repeat it three times.

PROF. JONES: I think the statement is now adequately set forth in the record.

MR. RACHLIN: I have no further questions.

THE CHAIRMAN: Prof. Wolf.

PROF. WOLF: What time did you arrive, approximately?

THE WITNESS: Approximately 11:30.

PROF. WOLF: Approximately what time did you complete these series of remarks?

THE WITNESS: The whole thing was roughly 15, 20 minutes.

PROF. WOLF: It was before noon?

THE WITNESS: Yes.

PROF. WOLF: Did you at some time later in the day repeat any or all of these remarks or make similar remarks again?

THE WITNESS: Not to my recollection.

PROF. WOLF: Thank you.

DEAN SULLIVAN: Dean De Koff, did I understand you to say that you recognized some--

MR. RACHLIN: I am sorry, I can't hear what you are saying.

DEAN SULLIVAN: Did I understand you to say you recognized some of the students?

THE WITNESS: Yes. I recognized the faces. I didn't recognize names. I recognized

George Gruenthal. I recognized the faces of several students there who I knew were in the college. I couldn't actually say--I couldn't recall their names.

DEAN SULLIVAN: Did you mention the name of a Richard Sober?

THE WITNESS: I think that is his name.

EXAMINATION BY PROF. JONES:

Q Two questions, Dean De Koff. When the group was sked to do something such as show their identification cards or to leave, did the group consult among themselves before they decided upon what to do?

A Several times they did, yes. They asked if they could have a few minutes to think. They talked among themselves.

Q Secondly, was it possible for someone to enter Room 606 without either removing one of the people sitting in front of the door or stepping upon one of the people sitting in front of the door?

A No, it was not possible.

MR. RACHLIN: It was not possible for anyone to enter the room, is that the idea?

THE WITNESS: I am not saying it was not possible for anyone to enter the room. It is possible you could have forced your way through. You could have stepped over the students, you could have possibly injured them, you could have used coercion to enter the room.

THE CHAIRMAN: While you were present, did anyone try to enter the room?

THE WITNESS: To my knowledge, no.

THE CHAIRMAN: Or to leave the room?

THE WITNESS: No.

PROF. WARNER: You referred to MR. Dillon as the spokesman and I gathered from your remarks that Mr. Dillon said something about their intentions concerning what they were going to do.

I wonder if you would tell me this again. What was Mr. Dillon's statement with regard to their intentions and was there anything said regarding this having been a preconceived intention?

THE WITNESS: Mr. Dillon did indicate that they had thought carefully about what they were doing and that it was their intention to bar the entrance so that no one could have entrance to the CIA agents there. It was their intention to interfere with the University function and then he went on to explain why, morally, they were doing this.

PROF. WARNER: Thank you.

THE CHAIRMAN: Prior to February 8th, had any of these students spoken to you about the scheduled CIA interviews?

THE WITNESS: No.

THE CHAIRMAN: Do you know whether they had spoken to any of the other officials of the college?

THE WITNESS: I have no information of that sort.

THE CHAIRMAN: Did the students have any banners or placards with them?

THE WITNESS: I did not notice any in the hallway. I noticed them earlier in the morning while they were picketing outside.

THE CHAIRMAN: But you do not recall having seen any while you were there?

THE WITNESS: No.

MR. LANGSON: Before February 8th, speaking for yourself, had you felt there might be any difficulty when the CIA came back?

THE WITNESS: To be perfectly honest with you, I had not given it any thought. I have been too busy seeing other students.

MR. LANGSAM: You hadn't thought about it at all?

THE WITNESS: No.

BY MR. RACHLIN:

Q Dean De Koff, you said you hadn't given it any thought.

I take it that was partly because nobody had asked your opinion whether you thought it was or was not advisable to have the CIA come?

A That is true.

THE CHAIRMAN: Thank you, Dean De Koff.

(Continued on page 218)

PROF. JONES: I would like next to call Proctor Kahn.

WILLIAM E. KAHN, resumed the stand and testified further as follows:

EXAMINATION BY MR. JONES:

Q Proctor Kahn, will you please describe briefly your duties as Proctor? What does that involve?

A I feel my role is to act as a buffer between the students and the administration, be aware of the activities taking place on campus and be present when student activities are being held, to meet with students when they want to arrange for Sundial rallies or presentation of speakers or plays or movies, scheduling of tables up on the Plaza for the student organizations and generally aware of the activities of the students.

Q Is it part of your duties to be aware of, cognizant of University regulations and policies relating to the use of space,both indoor space and outdoor space?

A Yes.

Q Is it part of your duties to keep the student organizations informed about University regulations and University policies pertaining to the use of indoor space and outdoor space?

A Yes, sir.

Q Proctor Kahn, how do you keep track of University policies in this respect?

A When I became Proctor of the University, after Proctor Smith had retired, one of my jobs was to try and find or put into one book the regulations that I was supposed to enforce and be aware of or cognizant of, and I started this book about a year ago and I have tried to put into this book the rules and regulations so when an incident does come up or a question is asked about a University regulation or College regulation, that I may be able to refer to this book quickly and without having to know where each one of these regulations is located.

Q This is, then,for your guidance in enforcing University policies?

A In my discussion with student leaders and the presentation of their activities and programs, I have a ready reference at hand.

Q Proctor Kahn, I would like to show you a memorandum from the Vice President directed to appropriate University officers, dated December 9, 1966, and ask whether you are familiar with the document.

A Yes, sir, I am familiar with this document.

Q Is that one of the documents that you keep on file in your book of University regulations and policies?

A Yes, sir.

Q Is it one of the documents that you keep in mind while advising students about their use of University space indoor and outdoor?

A Definitely.

PROF. JONES: Mr. Chairman, I now introduce the document in evidence.

THE CHAIRMAN: As University Exhibit P?

PROF. JONES: That is correct.

THE CHAIRMAN: Mr. Rachlin?

MR. RACHLIN: Technically, I think it is objectionable, but I will waive my objection. I think there has to be proof that the students were aware of this document, but I will waive my objection to it.

THE CHAIRMAN: Admitted.

(Book of University rules and regulations marked University Exhibit P in evidence as of this date.)

DEAN SULLIVAN: Will this document be made available to the panel?

PROF. JONES: It is now made available to the panel. I only have two copies. One, I gave to Mr. Rachlin.

THE CHAIRMAN: We may have a quarrel as to who gets to see this first.

PROF. JONES: I think the Chairman has the prerogative.

BY PROF. JONES:

Q Among the students' organizations with which you consulted, was the Students for a Democratic Society one of those organizations?

A Yes, sir.

Q Are there various individuals here who are members of that organization or some of the members?

A We don't have a complete list. The student organizations are required to list the names of their officers plus at least five other members. I dont memorize the membership list of any student organization.

Q Mr. Dillon, for example, is he a member of the Students for a Democratic Society?

A I haven't the slightest idea.

Q What is the practice with respect top picketing--

MR. RACHLIN: I have no objection to this interesting discussion, but we are not really concerned with the picketing situation, or are we?

PROF. JONES: The purpose of this question is introductory to part of the problems showing what is allowed and what is not allowed. I would like to ask first what is allowed.

A Usually the student leaders inform me of the fact they want to picket. I meet with a student leader, usually the president or chairman of that student organization or one of its officers, find out where he wants to picket, go over with him physically, sometimes actually go to the scene and see what the situation is, and we work out where the picket captains are going to be, if there is an area that people have to walk through, to insure that people are able to pass through and that picket signs cannot be placed on wooden standards. That is fundamentally it.

Q Had consultations with you taken place about the picketing that was to take place outside of Dodge Hall relating to CIA?

A Yes, sir.

A And an arrangement had been made as to the area in which the students could picket?

A Yes, definitely.

Q Were you there on the morning of February 8th and observed that they were picketing in the area that you had worked out with the student leaders?

A Yes, sir, and they were conforming with the plan that we had set up.

Q When did picketing cease to conform with the plan that you had set up?

A It never ceased. The picketing went on. There was no disruption of the picketing. They did not violate any rules or regulations in the picketing at any time.

At 20 minutes to 11:00, one of the pickets stepped out of the general--they were in a circular motion, counterclockwise, carrying their banners, and one of the pickets, Mr. Robert Dillon, took a step away from the line of march and made the announcement to the group that he was going up to the 6th floor of Dodge Hall and block the door, and then--the reason I am saying 12 other people followed him, because when I arrived up on the 6th floor, Capt. DeNisco and I counted the number of people that were there--there was 13. Robert Dillon plus 12 other people.

Q What were they doing?

A Sitting on the floor along the wall in about three rows, coming from the wall which is on the outside of the building toward the north. Toward the north there were two people. There were two people that could fit in the door. There were two directly in front of the door and two or three on each side and one or two in front of that on a third line coming from the door and spread along the floor, leaving enough passage that people could come back and forth.

Q There was no blockage of the corridor?

A No, sir, no blockage whatsoever.

Q Was there blockage of the doorway to Room 606?

A Yes, sir.

Q Would it have been possible for someone to enter Room 606 without either moving one of the people sitting on the floor or stepping on one of the people sitting on the floor?

A It would have been impossible to get to the door without either moving, physically moving someone or stepping on someone to get through, in my opinion.

Q Did anyone actually try to enter the room while you were there?

A Yes, sir.

Q Tell us if there were several, tell us about the first such instance.

A The first instance involved a secretary to--one of the secretaries in the placement office--I don't recall her name right now. It was mentioned before in the testimony. I know the lady--

THE CHAIRMAN: Miss Ayres?

THE WITNESS: Yes, Jean Ayres.

A (continuing) She said to Capt. DeNisco that she had some forms to take into the recruiters and that she would like to get through.

Capt. DeNisco said, "I will take you through." He attempted to get--stepping over people, and as he got to the door, both legs were grabbed. He was in an awkward position and he reached for the door to steady himself and then I said, "Captain, you better get out of there, you are going to get hurt or someone is going to get hurt." And he said, "All right," and he got out.

They physically wrapped themselves around his legs and prevented him from getting in.

MR. RACHLIN: I didn't hear that last thing.

Q Would you please repeat your testimony with respect to the attempt by Capt. DeNisco to escort Miss Ayres into Room 606?

A He had to step over people and he did get to the last row of the sit-in people.

THE CHAIRMAN: Those nearest the door?

THE WITNESS: Yes.

A (continuing) There were three rows of them. He had gotten past the first row and was in a process of reaching for the door when someone grabbed his leg and threw it up in the air, and the left leg was held down and he was in an awkward position and grabbed for the door to steady himself, and I was upset there, I thought he was going to get hurt or someone was going to get hurt,and I said, "Captain, you better get out of there because you are going to get hurt or someone is going to get hurt." And they let him back out.

Q Did Capt. DeNisco say anything to the students before he started to escort Miss Ayres through the group?

A I cannot recall whether he said anything or not to this group. I cannot recall it.

Q Had you said anything to the group?

A Oh, yes, when they first arrived--when I first arrived upon the floor. This was about 20 minutes to 11:00, a quarter to 11:00. As I said, about 20 minutes to 11:00 is when the group proceeded up to the 6th floor, so stated. They were heading for the 6th floor.

I think I testified before I immediately went to the security phone, which is about 10 or 15 feet away from the front of that door of Employment, which there is a sign outside which says "Employment."

I went to the security phone and called the desk, the supervisor and please to notify Capt. DeNisco that some of the pickets had gone up to the 6th floor of Dodge with the intent of sitting in front of the door of Room 606 and blocking it.

Q What did you say to the students when they arrived on the scene?

A When I arrived on the 6th floor, I waited for Capt. DeNisco. He arrived minutes thereafter. We counted the number of pickets or the people who were sitting in, rather, and then I went, I addressed the group. I identified myself and said that they were blocking the door to the room, Room 606, and this was in violation of University regulations,that you could not interfere with the operations of an office or any University function.

I said, "Will you please just move? Make enough room, you don't have to get out of the corridor, make enough room so people can get in and out of the door, that is all I am asking. Would you please move?"

And they said, "No," and Mr. Dillon--there were scatterings, "We are not moving, we intend to stay right where we are."

I said, "You realize, again, this is in violation of a University regulation? I am telling you this."

They said, "We are not moving."

I said, "If you don't move, fail to move, respond to my request for you to move, you are violating another University regulation that requires you to comply to a University officer's request."

There was no reply, a shaking of heads. Then I said, "You are going to have to identify yourselves, then, since you will not comply with my request, because you are going to be subject to disciplinary action, and I would like to have your ID cards. If you will not identify yourselves, I want your ID cards."

Then there was a discussion, a big discussion. It went back and forth--whether we should identify ourselves or whether we shouldn't identify ourselves. Why not? They know who we are. Words to that effect.

The argument went back and forth, I would say, about five minutes, seven minutes, something like that. Finally, they sort of all agreed. Some were shaking their heads, even though the agreement was made, that they would not, they would definitely not identify themselves. They didn't think this was proper that they should identify themselves.

I said, "Once again, please fellows, I don't want you to get yourselves in any trouble. You know I have always made an effort to insure your right to protest on this campus and you know I have always been for you, always had the feeling that you had the right to protest, and I would fight for your right to protest, but you have gone too far when you block this door."

I pleaded. That was it. There was no move made to move away from the front of the door.

Q Were other efforts made to enter the room after the initial effort that you described involving Capt. DeNisco and Miss Ayres?

A They were not made directly to me--

MR. RACHLIN: Let's not speculate.

PROF. JONES: I am asking the witness to report what he personally observed.

A (continuing) Miss Ayres had mentioned the fact it's a shame she couldn't get in, but to me personally she did not ask me to escort her into the room.

Q Did you see anyone enter the room?

A I did not see anyone enter the room. I heard--

Q I am not asking what you heard, Proctor. Simply what you saw. Did you see anyone enter the room?

A No, I did not.

Q Did you see anyone leave the room?

A No. There were times--I was away from there to make a couple of phone calls.

Q Will you please describe to the panel the efforts that were made to terminate the sit-in, again limiting yourself to that which you personally observed?

A I had made several phone calls to the Vice President and I made one about 2:30 advising him that the situation was still the same; that no one could get in the room and that comments were made that they were not going to allow anyone out of the room.

Q These were statements by the students?

A During the course of the afternoon these statements were made, as I remember, they would not allow anyone out of the room.

Q Were these statements made by just one person in the group?

A I can't pinpoint who said that.

Q Was it one person or several persons or was it said once or several times?

A Several times by several people. I cannot identify the person that said that. I did not take particular notice of that at that time, except the fact the impression was by statements made that no one would be allowed out of the office.

I told the Vice President of this at approximately

2:30 and I said also, as far as we could determine that no one was going to get into the room, and the Vice President said couldn't we just terminate, if no one is going into the room any more, why couldn't we just break the thing up--not break it up, but ask why they couldn't let the CIA out, since no more interviews would take place anyway.

I told the Vice President I would attempt to talk to the group and see if we couldn't work something out to this effect: that they would let the CIA representatives out, since apparently no more interviews were going to take place.

I went to the group, I talked to Tony Papert and asked him please to discuss this with the group.

Q Discuss what?

A The termination of the sit-in, since there were not going to be any more interviews, apparently, and we could work something out, to discuss it among his group so we could let the people out of the room.

It was about 2:30 at that time, they had not been out of the room since I arrived on the scene. I was thinking purely for humanitarian reasons, they had to go to the john or to eat something. I had been hungry and was rather upset at the fact I had eaten and they had not eaten, and also the sit-in people had their box lunch. I was concerned about that.

Tony said, "We are not in a hurry to make any decisions on this, but I will dicuss it with our group." Thatwas the attempt, my attempt.

Then about 3:00 to 3:10, Mr. Clark--I saw him kneeling down talking to Mr. Dillon and I went over and listened to what was going on, and Mr. Clark was telling them what is the use of continuing this sit-in, we could guarantee them there weren't going to be any more interviews that day anyway.

Then they discussed this thing back and forth.

I also said at that time, "You know you can trust me. If I tell you there are not going to be any more interviews on this campus today, you know damn well there are not going to be any more interviews today."

They said they wanted more than that. They wanted a statement signed by the CIA people that they would not recruit on campus any more and they asked for a piece of paper, a piece of yellow tablet paper. It was a pad they wrote on and they wrote up a statement.

There was some discussion what should go on the paper, the exact words that should be used, and they finally worked it out. Then Mr. Clark and Mr. Dillon knocked on the door and they went in and they were in there approximately five to ten minutes, five minutes or so, and they came out and Mr. Dillon had the paper in his hand and they said the CIA had signed, and Mr. Clark had signed. They also indicated they wanted Mr. Clark to sign this paper, too.

Q Did you at any time attempt physically to move any of the students out from in front of the door?

A No, sir. After I had talked to the students, my initial meeting with them in front of the door, I called the Vice President and told him what the situation was and when I completed telling him what had happened and what was presently taking place, he said, "Just leave them there. Don't physically try to move them. I am going to call Dean Truman, who is in the office," and they were having a meeting, the University Council was having a meeting--I don't recall exactly what group was meeting, but Dean Truman was in the Vice Preisdent's office and he told me he would talk to Dean Truman and have Dean Truman possibly get Dean Alexander over to the scene. This was approximately 11:15.

Q Were any efforts made to keep people away from Room 606 on the 6th floor?

A Yes, sir. The Vice President had also told me to make sure that a large crowd doesn't assemble on the 6th floor, a large crowd of sight-seers, to keep people away from the 6th floor as much as possible; that we don't have any crowding up on the 6th floor.

Q So, part of your efforts during the day were devoted to keeping the 6th floor clear of persons other than the students sitting in and people with business on that floor?

A Yes, sir.

Q You mentioned the other day that you were obliged to leave the 6th floor on certain occasions.

A Yes, sir.

Q Whatwas the reason for your first departure?

A The first one occurred about 12:15 when Nick Gruenberg came to me--

THE CHAIRMAN: Who is he?

THE WITNESS: Nick Gruenberg is one of the students who has been participating with several groups, Independent Committee on Vietnam, Students for a Democratic Society and other student groups. Which one he is presently associated with--again--

THE CHAIRMAN: He is a Columbia College student?

THE WITNESS: Yes.

A (continuing) He asked me if I would come down to the rally that was taking place at the Sundial, which had been arranged through my office.

Capt. DeNisco and I felt it was better for us to be up on the 6th floor rather than down at the rally. Capt. DeNisco and I usually attend all the rallies. We are present at most of the rallies. We felt it better if we stayed up there, so we were not present at the rally and Nick Gruenberg asked if I would step down to the rally. There was a group of people that he felt were coercing or intimidating the people at the rally with a large sign that was placed on wooden poles, which was against the University regulations.

I went down with Nick Gruenberg to the rally; I approached the group that had the sign; I asked for their cooperation, explaining the reasons for my objection to it, and in my role to retain peace and tranquility of the campus and to insure that all student organizations had the right to be heard.

I talked to the group and they cooperated and asked me where they could take the sign. I said "Take it off thepoles and set up a picket area down near Dodge, about 20, 30 feet away from the other group."

THE CHAIRMAN: Do you remember what that

sign said?

THE WITNESS: No, I was not aware of the sign.

THE CHAIRMAN: Was it friendly to the spirit of the rally?

THE WITNESS: It was anti the protest group.

BY PROF. JONES:

Q There was one group at the Sundial holding a rally objecting to the presence of the CIA?

A Pardon?

Q At the Sundial there was a scheduled rally which had the general tenor of objecting to the presence of CIA?

A Yes. This was the purpose of the rally, to protest the presence of the CIA on campus.

Q One of the students participating in this rally came to ask your assistance because still another group was there which was opposed to the people holding the rally?

A That is correct.

MR. RACHLIN: I have no real objection to the testimony, except I don't quite see its relevance to what was going on.

If Prof. Jones wants to put it in, it is all right with me.

PROF. JONES: I merely want to provide the Committee with as full a picture as possible as to the events happening on the campus on February 8th.

I have no further questions.

DEAN SULLIVAN: Who is the group that was protesting the protesters? Are they an organized group on campus?

THE WITNESS: They weren't actually at that time indicating any political or any organizational affiliation. I knew the people there and I knew what the--I was aware possibly of the group they were representing, but they were not officially representing any group.

DEAN SULLIVAN: It was a spontaneous action on their part? Certainly nothing had been cleared through your office?

THE WITNESS: No.

THE CHAIRMAN: Mr. Rachlin.

EXAMINATION BY MR. RACHLIN:

Q Proctor, I didn't get the time that you first became Proctor of the University.

A I guess this was 1965. Proctor Smith, the former

Proctor of the University, became ill and he retired July 1, 1965, and I was appointed as Assistant Proctor to the University at that time. At that time I was assistant to the Proctor. July 1st I was appointed Assistant Proctor of the University and I think it was in September 1965 I was appointed Proctor of the University.

Q You had been Assistant Proctor for how long prior to that?

A October 1964 to that time, sir.

Q I take it, then, as part of your duties all during this time from October 1964 until this very moment involved keeping in close terms with students, knowing what is going on in campus events; is that part of your responsibility?

A Yes, sir.

Q I assume it is one of your responsibilities to work closely with students and student activities?

A Yes, sir.

Q I assume you try to do that to the best of your ability?

A Yes, sir.

Q I assume, of course, as part of that responsibility you are aware of attitudes and student views on a whole lot of things that go on on campus?

A Yes, sir, I hope so.

Q When were you first made aware that there was a good deal of student discontent with the matter of the CIA being on the campus, when did you first learn about this?

A I don't know the exact time.

Q Approximately. I am not trying to pin you down.

A The first period of time when I was first aware of problems in this area or possibly I was thinking there could be problems--but when the first real possibility of definite problems came up was the first time this year, this academic year that CIA was going to interview on campus.

Q When would you have learned that, last September?

A When the CIA first came on campus.

THE CHAIRMAN: November of 1966.

Q The CIA was here some time during November of 1966?

A Yes, sir.

Q Had you learned of student feeling about this prior to that time?

A There is a possibility that people talked to me about it; the students talked to me about many things. I don't recall exactly when this occurred, though, sir. As I say, it was really brought to my attention in November of 1966, when they had rallies protesting the CIA interviewing on campus.

THE CHAIRMAN: There was also picketing on that occasion.

THE WITNESS: Not formal picketing. There were no arrangements made to picket with me the first time From the Sundial rally the motion was made at the rally to go over to Dodge Hall and demand an answer from the CIA representative, demand answers to questions about the CIA from the CIA representative on campus at that time.

BY MR. RACHLIN:

Q This was in November?

A Yes, sir.

THE CHAIRMAN: November 16th, the first day that CIA was interviewing on campus.

Q Would you describe the student feeling about the CIA as rather intense?

A The students that represented the student organization, the Students For a Democratic Society, the ones I was working with in this area, at that time, very intense, definitely.

Q In fact, weren't other students besides SDS concerned about this matter at all?

A Yes. Students would stop me on campus and talk to me about it.

Q In fact, this was one of the problems the students seemed to be concerned about, than problems generally; is that true?

A At that time,yes. The people that talked to me were definitely--

Q And you say a certain number of students just stopped you on the campus to discuss thematter with you?

A To tell me how they felt and how I felt about it and I said, "You know my position here, I do not discuss my feelings or the University's feelings. I am here to make sure whatever you want to protest, you can protest."

Q And you knew about, I assume, the meeting with President Kirk back, was it, last November about this very problem?

A Yes, sir.

Q In fact, you knew that a fairly large number of students went to see him?

A Yes.

Q Approximately how many would you say?

A The number of people that were in the rotunda at that time was 350 to 400 people.

THE CHAIRMAN: Were you present at that meeting?

THE WITNESS: Yes, I was.

Q So the approximately 400, give or take some, was there at that meeting?

A Yes.

Q That, in itself, is a rather unusual event?

A Thatwas unusual.

Q So that you could judge by things like that there was a considerable amount of student feeling about the presence of the CIA on the campus.

A On that group, of course, there were administrators and faculty members and other people. You couldn't tell who was for the CIA being on campus and who was against. There were many people there that wanted to hear the President talk about this.

Q What did the President say on that occasion, if you heard it?

A I think the main point there was that the University did not make any value judgments and the CIA was another agency that was invited--that had asked to come on campus.

Q The President said Columbia would not make any value judgments as to organizations that came on campus; is that what he meant or what did you understand him to mean?

A You realize I am constantly thinking about the security of this meeting and I did not listen intently.

Q Then I won't ask you any further questions about it.

In any event, this was a fairly large meeting in the rotunda and this was not a normal course of events?

A No.

Q An official part of your duties, as you yourself described it in your opening comment, was to be a kind of go-between the students and the administration, in a sense, to keep in touch with both and to try an and pass opinions back and forth so there was a means of communication; is that correct?

A That is correct, sir.

Q In discussing with the Vice President or President, for that matter, had you indicated to them this feeling about the CIA?

A No, I didn't indicate. I reported to the Vice President there were going to be rallies protesting this and that the Students For a Democratic Society were definitely against the CIA's presence on campus and indicated they felt very strongly about this.

(continued on page 244)

Q Were you asked your opinion as to the wisdom of the CIA being on campus?

A No, sir.

Q Let us move ourselves to the events of February 8th. First I would like just to clarify because I have a little confusion in my mind as to the times you were and were not there.

A Yes.

Q In your own words, without trying to pin you down precisely, tell us when you first arrived on the sixth floor because we are not concerned about the events downstairs because you said they did not violate the regulations.

A Right.

Q In your own words, tell us when you arrived and when you had occasion to leave and when you came back.

A As I said, about 20 minutes to 11, the group went up to the sixth floor. I arrived on the sixth floor approximately five minutes after they arrived. I stayed up there until 12:15. In this period I made at least four phone calls from the phone in Mr. Clark's office. I called the vice president, I called Wesley First. I called the office of College Relations and I called Dean Walton's office.

There were four phone calls which took about two or three minutes during this period. At all other times I was out on the sixth floor.

Q Except you said you were requested to attend--

A At 12:15.

Q I am sorry, go ahead.

A 12:15 I was out in the vicinity of the Sundial from about 12:15 until about a quarter to 1. It was during this time I learned there was going to be a meeting in the basement of Dodge by the members of SDS to vote whether or not they would join the sit-in participants and then I went back to the sixth floor.

Q What time would that be, approximately?

A A quarter to 1. About a quarter after 1, a student, I can't say he was from SDS, a student who said he was from SDS indicated again he was having a little difficulty, they were having a little difficulty in the basement with this same group that had been out at the Sundial.

I went down with this gentleman to the basement of Dodge. I talked to the same people I had talked to out by the place, the Sundial, and asked for their co-operation. At that time they were also requested to move away from the stairway if they wanted to stay at the meeting. SDS did not indicate any desire to move them out of the area, so I asked them to step against the wall so they would not block the stairs and they cooperated with me one hundred per cent and I was only there about five or ten minutes and felt this was a private or a meeting of SDS and I should not be there, so I went back up to the sixth floor and arrived there 1:30.

I was there the rest of the time, until 3:30.

Q What time was it that Capt. DeNisco made this effort that you previously described?

A I had made my pitch to the students. This was about 11:15 or so.

Q I will go into that in a moment. Were you there at 11:30?

A Yes, sir.

Q Did anybody to your knowledge attempt to go into this room at 11:30?

A I don't remember seeing anybody trying to go. Mr. Clark was there all the time.

Q I am not asking about Mr. Clark. He can testify for himself. I am asking what you saw. Did you, at approximately 11:30, see anybody attempt to go in?

A No, sir.

Q You say you arrived back about 1:30 after being in the basement?

A Yes, sir.

Q To the best of your knowledge, did you see anybody attempt to go through at 1:30?

A Physically attempt to go through?

Q Yes.

A No, sir.

Q How about 2 o'clock?

A No, sir, not to my knowledge.

Q How about 3 o'clock?

A No, sir.

Q And 3:30?

A I think it was about a quarter after 3 that Mr. Dillon and Mr. Clark went into the room.

Q Did you ever see anybody actually go into the room?

A I did not personally see anyone go into the room.

Q Did you talk to the men inside the room?

A No, sir.

Q You mentioned you were concerned about them. Didn't you ask them whether they wanted any help?

A No, sir.

Q Did Mr. Clark?

A Talk to the people directly, no, sir.

Q By the way, do you know whether the door was locked or not?

A No, sir.

Q You don't know one way or the other?

A I don't know one way or the other.

Q Was there any way of communicating with the people inside the room except by talking through the door?

A By crawling out on a ledge and going in the window which was done.

Q Did anybody do that on this occasion?

A Yes, sir, I found out about that.

Q Who did that?

A One reporter from Spectator.

MR. RACHLIN: I guess there is hope for the newspaper business after all.

THE WITNESS: I wouldn't have let him do it if I had known about it because it was snowing and it was slippery.

MR. RACHLIN: At least it was soft down below.

Q I take it then except for the incident of Capt. DeNisco and Miss Ayres, you of your own knowledge, at least, did not see anybody try to go through?

A Physically try to get into the room, no, sir.

Q Or anybody actually getting in?

A No, sir.

Q Let us for the moment talk about Capt. DeNisco. Approximately what time was it that he attempted to go into the room?

A I am saying about 11:15, sir.

Q Using your best judgment, counting from the door into the corridor, how many feet were occupied by human bodies?

A From the door out into the corridor?

Q Yes.

A I would say about seven feet.

Q You were there when Capt. DeNisco made this effort and let's follow him step by step. How many steps did he actually take into the group?

A I would say he was on his third step.

Q He made the first one and he made the second one?

A Right.

Q When he made the second one, about how far was he from the door?

A I would say he was about--when he landed, when he made his second step, one, two, about three feet from the door.

Q You say he leaned forward and seemed to be about to fall?

A Yes (indicating).

Q Was he off balance?

A Yes.

Q You thought he was in danger of falling?

A Yes, he could have fallen.

Q Did you see somebody grab him?

A Yes.

Q Who grabbed him?

A I have a picture I could show you.

Q We will come to that in a moment.

A The two students in front of the door had his leg--

THE CHAIRMAN: I think since you asked--

MR. RACHLIN: We will come to that in a moment. Let me finish with this witness.

Q The closest he got was about three feet from the door to the best of your knowledge? You tell me.

A About three feet.

Q Did he ever actually get his hand on the door?

A Yes, sir.

Q What part of the door?

A The handle, the doorknob.

Q Did he try it?

A I don't know. He just grabbed it because he was off balance. It looked to me like he was attempting to keep himself from falling.

Q It looked like he was attempting to keep himself from falling. I am going to show you this picture and ask you to identify the person in the picture.

A That is Capt. DeNisco.

Q There is no doubt in your mind about it?

Would you show it to Prof. Jones?

Do you recognize that as being at the time the events took place?

A Well, I don't think the captain ever did this but once. This is the one time he tried to do it.

Q How many hands does he have on the door there?

A Two hands.

Q Where is one of them?

A On the doorknob.

Q What does that hand appear to be doing?

A Well, he has his hand on it.

Q We can discuss he is apparently trying to turn the knob on the door.

A Could be, yes.

MR. RACHLIN: I would like to offer this picture in evidence.

THE CHAIRMAN: Are you trying to identify--

MR. RACHLIN: I can put on the witness who took the picture if necessary. I don't think it is necessary.

PROF. JONES: I would like to look at it again. As long as the witness has identified it, it is satisfactory to me.

THE CHAIRMAN: Mr. Kahn, can you identify the students in the photograph?

THE WITNESS: Yes, sir.

THE CHAIRMAN: Will you look at it and tell us who they are?

MR. RACHLIN: I didn't hear what you said.

THE CHAIRMAN: I asked Proctor Kahn if he could identify the students in the photograph.

MR. RACHLIN: Go ahead, I don't mind.

THE WITNESS: This fellow right here--

MR. RACHLIN: The lower part of the picture.

THE WITNESS: This gentleman right there.

MR. RACHLIN: Identifying Richard Sober?

THE WITNESS: That is right. Maybe I bettr put my glasses on. This fellow right here has not been in this hearing room.

MR. RACHLIN: In other words, pointing to somebody on the right lower quadrant of the picture with glasses, he is not one of the people sitting here.

THE WITNESS: He is not sitting here now. This is Roger Taus.

MR. RACHLIN: Indicating the middle right hand side of the picture with glasses.

BY MR. RACHLIN:

Q Roger Taus, is he anywhere near the door?

A From this picture, I am not sure. If we had a larger picture I could tell for sure. There are several people that wear glasses and this is rather far away to definitely identify him.

Q Can you identify anybody from that picture who is actually in front of the door?

A Mr. Sober.

Q Can you tell that he is actually in front of the door or is he along the sill?

A His back, his spine is in the jamb of the door, as I remember him sitting there.

Q The picture, of course, indicates that the captain is rather close to the door.

A Yes. Right.

THE CHAIRMAN: Student's Exhibit 2.

(Photograph marked Students' Exhibit 2 in evidence, as of this date.)

BY MR. RACHLIN:

Q Did anyone to the best of your knowledge and presence,ask the CIA people if they would like to leave prior to this event of 3:15 or so?

A I am not aware of it, sir. The reporter may have.

Q Not in your presence anyhow?

A No.

Q I take it from what you said no one asked them if they wanted to use the washroom?

A No, sir.

Q Nor did anybody ask them if they wanted any lunch?

A That is correct. Not to my knowledge.

Q I wouldn't ask you to discuss what took place outside your presence.

Did any of the students in your presence actually use physical violence?

A I thought when the captain tried to get in that physical violence was used, yes.

Q You mean that they grabbed him?

A Yes.

Q Wouldn't you think perhaps you misunderstood that act in light of the picture I have just shown you?

A I am in back of the captain as he is going to the door. When I gave these figures of three feet or whatever it was--

Q You didn't have a good view of it, really?

A Not from the side, from the back. It looked like this (indicating). Whatever this motion was and he was heading for the door.

Q In light of this picture, would you be willing to say to us that perhaps you misunderstood that business of grabbing him on the legs, that nobody was really attempting to harm him in any way?

A I saw the physical grabbing of the captain's leg especially by Mr. Sober. I definitely saw him with his arm around.

Q In any event, in looking at this picture, Sober has his hands folded across or resting on his knees.

A No, sir. The way I see this, he has his arm around his leg.

Q His own leg?

A No, Capt. DeNisco's leg. The captain's leg is in here (indicating).

MR. RACHLIN: We will let the panel decide that for themselves.

Q You were actually present at 11:30, weren't you?

A Yes.

Q To the best of your knowledge, nobody actually entered the room around that time?

A No, sir. Remember, I told you there were four phone calls I made. I did not see anyone do this.

Q I thought you indicated to us, perhaps I misunderstood you, that at one of the times you were actually there was at 11:30.

A I was on the floor from 11 up until 12:15. I was on the floor except for the four phone calls that I made.

Q Do you happen to know then who this is that is entering the room?

A No, sir.

Q I am referring to photograph 19.

THE CHAIRMAN: Is that in evidence?

MR. RACHLIN: Not yet. I am asking the Proctor about it.

A No, sir.

Q There is no doubt this is the scene that was taking place?

A I would assume so. I didn't see this taking place.

Q You did not see that take place?

A No.

MR. RACHLIN: May I have it marked for identification.

(Photograph marked Students' Exhibit 3 in evidence, as of this date.)

BY MR. RACHLIN:

Q I take it then Proctor, to the best of your recollection, you probably were out of the room making a telephone call when that took place?

A That is right, I did not see that happen.

Q I am not saying you did. I am trying to straighten out the fact. Sometimes our memories are not as precise as we would like to believe. I am not suggesting that you saw that and didn't tell us about that, I don't mean to intend that at all.

In any event, at other times of the day, leaving aside this incident, forgetting about it for the moment, you did not see anybody besides Capt. DeNisco and Miss Ayers attempt or try to go inside?

A No, sir.

THE CHAIRMAN: Do we know, Prof. Jones, who took this photograph?

PROF. JONES: That is one of Mr. Jahn's pictures and I will be happy to have him be called for the purpose of giving us whatever information he knows about it if the panel so desires.

THE CHAIRMAN: That may be relevant. We can wait and see though.

MR. RACHLIN: I don't think it will be ncessary if Prof. Jones will acknowledge that is one of the pictures that Mr. Jahn took.

PROF. JONES: I only suggested that Mr. Jahn may recall when it was taken.

MR. RACHLIN: I don't care one way or the other. Whichever you prefer.

PROF. JONES: Why don't we finish with Mr. Kahn, then we can ask Mr. Jahn about that picture. I am assuming of course you wish ultimately to admit it in evidence?

MR. RACHLIN: Yes, I wil ultimately.

BY MR. RACHLIN:

Q Proctor, I gather on the opposite side of the wall corridor from Room 606, people did from time to time pass by?

A Yes.

Q There was no effort to stop them?

A No.

Q Whatever action there was was directed solely against this room, is that right?

A That's right.

MR. RACHLIN: No further questions.

PROF. WOLF: May I briefly ask you two lines of questions: First, you told us about the warnings that you issed to the students in the morning and the statements you made about the breach of University regulations.

Were these warnings which you repeated during the day or was this the only time?

THE WITNESS: That was the only time I made my statements.

PROF. WOLF: This was at about what time, roughly?

THE WITNESS: I would say they went up there about 20 minutes--

PROF. WOLF: Just within a half hour.

THE WITNESS: About 11:15.

PROF. WOLF: And you outlined the regulations?

THE WITNESS: I am sorry, it wasn't that

late. It was about 11 o'clock.

PROF. WOLF: You outlined the regulations, telling them they were breaking regulations and so forth?

THE WITNESS: Yes.

PROF. WOLF: That was the only time you did that?

THE WITNESS: Yes.

PROF. WOLF: In your function as proctor, have you been involved in and perhaps present at disciplinary actions that have been taken? Are you involved in these at all?

THE WITNESS: I was a witness in the May 7th hearings when we had a blocking of the door, a disruption of a University function, May 7, 1965.

PROF. WOLF: You don't generally become involved in these?

THE WITNESS: Yes, I do if I am present.

PROF. WOLF: You are acquainted concerning this memorandum about picketing and also the statements in the College Handbook?

THE WITNESS: Yes, sir.

PROF. WOLF: The College Handbook lists a series of violations or acts which are violations and it is also indicated here that a series of acts or violations and the College Handbook lists a range of possible disciplinary action all the way from--it says all the way from admonition through dismissal.

To your knowledge, is there any way in which a student in the College or in some other part of the University can find out what punishments are attached to what violations so that he has some way of knowing before he engages in an act, what the maximum punishment is which is associated with a violation?

Nothing in this literature seems to tell us that.

THE WITNESS: Where they could find out, where this is published?

PROF. WOLF: Or otherwise. Is there some official way in which a student can find out before he engages in an action what punishments he is liable for?

THE WITNESS: I don't deal too much in the punishment side of it. I am not in the position of dispensing punishment. Mine is only a reporting phase of this thing.

PROF. WOLF: In your activities as proctor and in your function as proctor, have students ever asked you, for example, something like this, "If we do thus and so, what will they do to us?" Or "What punishment will they do?"

THE WITNESS: No.

PROF. WOLF: You aren't familiar from your own knowledge in a general way in which the student can find out? The book says anything up to dismissal but it doesn't say what breach it will bring upon him.

THE WITNESS: This is a function of the Dean's office, the Dean himself, to dispense disciplinary action. The degree of it depends on the Dean, what he wants to do with it. It is up to each school, division of the University to dispense their discipline.

PROF. JONES: I think, Mr. Chairman, that the witness has testified he has no knowledge of this area of activity.

PROF. WOLF: Objection.

THE CHAIRMAN: Dean Truman? Dean Sullivan? Prof. Warner?

PROF. WARNER: It is not clear to me with regard to the population that sat down, was it a constant one or did it change?

THE WITNESS: It changes.

PROF. WARNER: Others came?

THE WITNESS: Other people came.

PROF. WARNER: You gave your discussion to the students of the violation of rules. Was it repeated for the new students?

THE WITNESS: Every new student that sat down, I made him aware of the situation. I indicated the fact that these students were interfering with a University office, that they refused to move, they refused to identify themselves. I asked the person point blank, "You are aware of this, do you intend to do the same thing," and several did.

PROF. WARNER: How many students joined that group after the initial sit-down started?

THE WITNESS: I would say approximately five.

PROF. WARNER: This was throughout the day?

THE WITNESS: Yes, that I was aware of sitting down after these people sat down.

PROF. WARNER: Did any leave or was this cumulative?

THE WITNESS: Some of them went out to eat lunch and came back.

PROF. WARNER: A changing of the guard?

THE WITNESS: Yes. I did not keep a constant check who came and who went. When I was there and a new person sat down, I went and talked with him.

PROF. WARNER: What else was going on on the sixth floor, were there classes or many other activities?

THE WITNESS: There are many offices on the sixth floor. I am not aware of the function of each office or each cubicle. There were various people going into the several offices. There were people standing around. We kept them away from the sit-in group and we allowed some people to stand around and observe.

Just so they were not interfering with the function of the office, people walking back and forth or not making noise or disturbing in any way.

PROF. WARNER: No lunch was brought in to the CIA agents to your knowledge?

THE WITNESS: That is correct.

PROF. WARNER: Was this a deliberate decision on your part not to try to breach the line?

THE WITNESS: My instructions were not to physically try to get into the office.

PROF. WARNER: Was any request made that the students who were sitting whether or not they would permit lunch to be brought in?

THE WITNESS: It was our feeling they were not going to allow anyone to get in or out. I did not do it.

PROF. WARNER: That's all.

MR. MENT: Earlier you mentioned and I think it was brought into evidence, a memorandum from the vice president's office. Did you understand that memorandum as being a list of University regulations or as being something else?

THE WITNESS: This was a University regulation.

MR. MENT: Was this ever published in any way or students ever informed of it?

THE WITNESS: I am not aware which way it was publicized. I haven't seen it anywhere else except in the memorandum that I have in my book.

MR. MENT: Can I have a copy of it?

THE WITNESS: It hasn't been published.

MR. MENT: The memorandum is to appropriate

University officers and it lists ten University officials and nowhere in the memorandum does it indicate it is being publicized in any other way and you don't know of any other way it is publiccized?

THE WITNESS: No, I don't, except I talk to the students and indicate that blocking of a doorway was a breach of a University regulation.

PROF. JONES: Which students?

THE WITNESS: I made an announcement to the group when I talked to them.

PROF. JONES: On February 8th?

THE WITNESS: Yes. The sit-in time.

THE CHAIRMAN: Did you read from that memorandum?

THE WITNESS: No, I did not read from that.

PROF. JONES: I have one other question, Mr. Chairman.

BY MR. JONES:

Q You said in response to several of Mr. Rachlin's questions that Capt. DeNisco and Miss Ayers were the only two that attempted to actually thread their way through the students sitting on the floor?

A To my knowledge.

Q Did anyone attempt to enter the room in the sense of asking the students to move aside so they might go through the crowd, to your knowledge? Did you see anyone make any such effort?

A I am not aware of that. I don't recall that.

Q One further question. Can you identify any of the students who arrived late? That is, you say the population shifted. Do you know of anyone who specifically arrived later than the others, joined in the group at a later time during the day?

A That is difficult to say. I remember the face of the people that were there and I remember talking to people but specific ones, I think the only one I might recall that I talked to specifically was Michael Melzer.

I seem to remember talking to him as he sat down on the floor there after he came in, sort of a new member of the sit-in group.

THE CHAIRMAN: On a related note, Proctor Kahn, during your testimony you have identified several of the students by name as having been present, Robert Dillon, Anthony Papert, Richard Sober, Roger Taus and now Michael Melzer.

Can you identify for the record the other students whom you recall as having been present on

February 8th?

THE WITNESS: Yes, sir.

THE CHAIRMAN: Will you do so?

THE WITNESS: I have my list here. Susan Kaplow, John Jacobs. Jessica Holland is not here. She is a Barnard student. She was there. James Newton, Richard Fioravanti, Edward Spannaus, George Gruenthal. You have said Sober and Papert. Peter Bobrick is another one.

THE CHAIRMAN: Robert Peter?

THE WITNESS: Right. The other Bobrick.

THE CHAIRMAN: Benson Bobrick.

THE WITNESS: Yes.

THE CHAIRMAN: John Sinisi?

THE WITNESS: No, sir, I never saw him at the sit-in.

PROF. JONES: He is prominently displayed in several photographs so this is not mere bravado on his part.

THE WITNESS: I don't remember that fellow.

THE CHAIRMAN: Proctor Kahn, you spoke of a meeting in the rotunda some time in November of 1966. Did that meeting follow the first efforts of the CIA to interview on campus this academic year?

THE WITNESS: Yes.

THE CHAIRMAN: Do you know who arranged that meeting?

THE WITNESS: Well, I had talked to John First on the Sunday before that.

THE CHAIRMAN: This was after the CIA had been on campus?

THE WITNESS: Right.

This was also at the time when they gave a letter to the President.

THE CHAIRMAN: They?

THE WITNESS: Students for a Democratic Society sent a letter to the President and they wanted an answer to the questions they raised that was in that letter to the President and they indicated they were going to come back--I don't remember the dates of this--they were going to come back on Monday for an answer and during the weekend I was concerned about this.

I thought we should prevent any violence from taking place if we possibly could and I called John First at home on Sunday afternoon indicating that we thought maybe we could work something out where the President might speak to the students instead of having them come into his office and then have everyone in trouble and getting themselves in trouble that we would talk to the President and find out if he would give them an answer or talk to them in an open meeting of some type.

Q Do you know what the request of the President was, contained in that letter to them?

A I don't recall it, no.

Q Thereafter this meeting in the Low rotunda was arranged?

A Yes.

Q Who was present in behalf of the administration?

THE WITNESS: At what point?

THE CHAIRMAN: At the meeting in the Low rotunda.

THE WITNESS: The President had made himself available to the group in Low rotunda.

THE CHAIRMAN: As briefly as you can, what happened at that meeting?

THE WITNESS: The group assembled in Low rotunda and the President came in and made himself available to the questions and the questions came from the audience and he answered their questions. The main thing being what right has the University or why did the University invite CIA on campus.

THE CHAIRMAN: Was there a discussion at that time about the CIA interviews already scheduled for February of 1967?

THE WITNESS: No, sir, not to my knowledge. I don't recall that at all.

THE CHAIRMAN: So that the discussion referred to events past, the interviews scheduled for November of 1966?

THE WITNESS: Possibly came up in that discussion the students would not like to see the CIA on campus again. This might have been said. I am not aware of it, the exact words.

THE CHAIRMAN: Did the President on that occasion make a statement as to the University policy with regard to CIA interviews on campus?

THE WITNESS: The only thing as I recall was that the University does not make valuable judgments.

THE CHAIRMAN: How long did the meeting last?

THE WITNESS: From about 12:30 to 1:30.

THE CHAIRMAN: Could you characterize it as having been an orderly meeting?

THE WITNESS: Yes, sir. As far as any

incident taking place there were no incidents that needed disciplinary action.

THE CHAIRMAN: Prior to the interviews scheduled for February 8th, did you have any indication that the protests would take form other than picketing?

THE WITNESS: No, sir. It was always in my mind the possibility of it happening because we have to consider all eventualities or events that take place during picketing but there was no indication that this was going to take place, this sit-in.

THE CHAIRMAN: Of your knowledge was there any other communication between the students here and members of the University administration with respect to CIA interviews?

THE WITNESS: Any communication between students and the administration?

THE CHAIRMAN: Yes, to your knowledge.

THE WITNESS: I can't recall anything right now.

BY MR. RACHLIN:

Q At this November meeting with President Kirk, the President had indicated to the students he would not put any value judgment on ~~it~~, meaning he would permit the CIA to come back, is that right?

A I do not interpret the President's feeling in this area at all. I have made myself completely available to people to be able to take anything from the students to the administration and the administration to the students. I act as a buffer between these two.

Q In response to a question or comment by Prof. Berger, you indicated though the students had apparently asked that the CIA not be allowed to come back and the President said he doesn't put value judgments?

A They made the President aware they were not happy with the situation.

Q The President knew at least what some students thought about this problem?

A I assume so.

Q And as far as you knew there was a certain amount of discontent with the CIA?

A Yes, sir.

Q Is one of your responsibilities keeping security around the campus so untoward events don't take place?

A Keeping security?

Q To make sure there are no acts of violence if you can possibly prevent them.

A If I can possibly prevent them, yes, sir.

Q Did you, perhaps, suggest to the vice president or to anyone else that maybe these interviews with the CIA ought to take place off campus?

A No, sir.

MR. RACHLIN: No further questions.

THE CHAIRMAN: We will take a ten minute recess then convene again until 2 o'clock.

(Whereupon a recess was taken.)

ADAM DeNISCO, called as a witness, testified as follows:

EXAMINATION BY PROF. JONES.

Q Please state your name and your position with the University.

A Adam DeNisco. The title is University Security Officer.

Q Capt. DeNisco, roughly during what period of the day were you present on the sixth floor on February 8th?

A I started approximately a quarter of 11 and I remained there right to the end with the exception of time for eating, making telephone calls and going down to the bathroom at one time.

Q Were you away from the sixth floor for any prolonged period of time, say, more than fifteen minutes.,

A The longest was about 15 minutes to eat a sandwich.

(Continued on page 275.)

Q We have had some testimony about your attempt to enter Room 606 with Miss Ayres.

Will you please describe the time that that took place and what happened?

A It was some time between 11:00 and 11:30. I can fix it because it was prior to the Dean's coming. Miss Ayres came to me and said she has business to conduct with the agents inside and that she had been stopped so I said, "What is your business?"

She said, "I have information about the interviews and the names and the times."

I said, "Let's try." And we went over in front of Room 606. I told the students that this lady is an employee of placement and has business with the two agents inside, would they please step aside.

I then stepped toward the room. I recall stepping between two students that were in sort of the second row if you want to call it a row and went toward the door and I found myself in a position where my legs, both of my legs were grabbed by the ankles or so between the knee and the ankles and I toppled forward just as I was about to open the door and then I pushed away and fell over to the left.

I didn't fall to the ground, I was just off balance.

Then I stepped back.

Q The students released you as you stepped back?

A As I was falling to the left, my best recollection as I was falling they let go. I didn't fall to the ground or on any persons.

Q You then moved away from the group?

A I moved back.

Q Did you make any other effort to enter the room?

A No other effort.

Q Did anyone else make any effort to enter the room?

A I saw Mr. Clark. I didn't listen to the conversation, but I saw Mr. Clark take a student in front of the group and backed away and when he came back I asked him what happened and he told me--

Q Limit yourself to what you saw.

A I didn't listen.

Q This happened once, twice?

A At least twice.

Q At any time did you make any effort to move any of the students out from in front of the door?

A At no time did I make any physical effort to remove them.

Q Did you see anyone enter the room or leave the room during the period you were there?

A There was a person talking to the students who after a conversation with the students did go into the room. He was a bearded person. I couldn't identify him. I asked who he was and someone said a student from SDS. I didn't see him when he came out.

Q Did you see anyone else come out of the room?

A No, I did not.

THE CHAIRMAN: What time was that, approximately, Captain?

THE WITNESS: When the bearded student went in, it was much after the time the Deans were there. In the general area of about one o'clock or so. I couldn't pinpoint it for sure.

Q Were you present when the negotiations with the students were going on about the termination of the demonstration?

A Yes.. Alexander and Clark spoke to them and at one point I even spoke to them and said, "Let's be realistic, you have made your point, you have demonstrated, you have had your food, how about letting the CIA men have their food"and I said, "you haven't even let them go to the john," and I used just that expression.

There was a discussion amongst them and the decision was made not to let them move.

At each point in the negotiations they held a sort of open caucus, took votes at one time as to raising of hands as to their next move.

Q This related to the termination of the demonstration or are you talking about something else?

A I am talking about toward the end. From three o'clock until about 3:30 there was a duration of time which you might call negotiating. At one point they had demanded and the spokesman has been identified as Mr. Dillon here, they demanded that they receive in writing from the two men inside that they would not only leave the room, but that the CIA would not come back to campus and also they demanded a letter from Dr. Clark indicating that the CIA would not come back to campus.

I said, "I don't know if the president is in, but I also know as far as the two men inside they are not in a decision-making capacity, let's face it, they are only recruiters. We've gotten the assurance there are not going to be any more interviews, let's be realistic and let them out."

At that point they decided--they took a vote as to whether or not to put it in writing and Mr. Clark was discussing it with them and he decided to put something in writing and have the two agents sign that they would not come back that day.

In fact, there was a little bickering about one word, whether he was to remain on campus or not. It was one of the last words in the written statement which was written in longhand on an ordinary yellow ruled pad.

Q Were you in communication with the men inside?

A There was no way of communicating with them by phone. This is a conference room in which there is no phone.

Q Did you make any other effort to communicate?

A I did not make any other effort to communicate with them.

Q Did you see anybody else make any effort to communicate with them?

A I think at one time there were two reporters of the Spectator that were trying to get in there. I don't recall whether they got as far as the door or not.

Q What led you to believe that the CIA men wanted to come out or the students would prevent them from coming out?

Q As far as the CIA men wanting to come out, I have no idea what went on in their minds. We were not in communication with them.

As far as the students were concerned, there were statements made by several of the group that nobody goes in and nobody goes out.

PROF. JONES: No other questions.

THE CHAIRMAN: Were the CIA men engaged in the negotiations?

THE WITNESS: Only after Mr. Clark and Mr. Dillon went into Room 606 proper.

THE CHAIRMAN: In other words, the agreement was first reached between Mr. Dillon and Mr. Clark and only after they reached agreement was the door to Room 606 opened; is that right?

THE WITNESS: That is correct.

THE CHAIRMAN: Mr. Clark and Mr. Dillon then went inside the room?

THE WITNESS: That is correct.

THE CHAIRMAN: Shortly afterward--

THE WITNESS: They came out with signatures.

THE CHAIRMAN: Did all four men come out?

THE WITNESS: Yes.

THE CHAIRMAN: Mr. Rachlin.

BY MR. RACHLIN:

Q Captain, how close did you finally get to the door, do you remember?

A I touched the door knob and I was braced against the door, I think. I was in a position off balance and leaning forward.

Q When you had your hand on the door knob, the door was locked, wasn't it?

A My intention was to open the door. I never opened the door and I can't testify for sure whether the door was locked or unlocked because of being thrown off balance.

Q Of course you knew the students or some of the students had said the door was locked, didn't they?

A They did.

Q Anyway, you didn't know one way or the other?

A I didn't know for sure whether it was locked or unlocked. They did make the statement the door was locked and I asked one of the young ladies in the office whether a key was available.

Q You didn't make any comment whether it was locked or unlocked?

A We had a discussion about it and I said I don't know whether it is locked or unlocked. It if is locked we should have a key.

Q Let me ask you, Captain. I am asking you to search your memory.

Wasn't there one point where you said it is locked?

A Never definitely. I might have said"I think it is locked, you better get a key." I wasn't sure about it.

Q Did you try to get a key?

A Yes.

Q Who had the key?

A Miss Ayres had the key. We didn't try the key.

Q Did you ask through the door to the CIA men inside whether the door was locked?

A No, I didn't.

Q Did you ask them if they wanted to come out?

A No, I didn't.

Q You didn't, of course, ask them if they wanted any food?

A No, I did not.

Q Let's go back again. I am trying to clear up this question of how close you came to the door. Did you come up face to the door?

A No, sir.

Q About how far away were you?

A Approximately--it is a difficult thing to measure it in inches. I know I wound up pitched forward and off balance braced against the door and the door knob itself.

Q You were off balance?

A Yes, sir.

Q You didn't get up so close to the door you couldn't get any closer?

A I don't understand that question.

Q You didn't of your own actions get so close to the door that if you moved forward any further, you would be flush against the door?

A No, I didn't. There were several students in front of the door, the door itself with their back to the door.

Q And they prevented you from getting up directly to the door?

A That is correct.

Q There was then what, two feet between you and the door?

A Nearer to three feet because I was pitched forward.

Q You would say it was three feet between you and the door?

A Yes.

Q So in order to touch the door, you had to lean forward a good deal?

A I was pitched forward, off balance.

Q You were actually off balance?

A Yes.

Q And threw your hands against the door?

A To brace myself, yes, sir.

Q Do you recall where on the door your hands were laid, first your left hand then your right hand?

A My right hand reached the door knob and my left hand somewhere on the door or the door jamb.

Q Your left hand was somewhere on the body of the door and you think your right hand was on the knob?

A I said either the door or the door jamb, I don't know, I pitched forward.

Q Your right hand?

A On the knob.

Q If you were off balance you had to reach and your right hand touched the door knob, wouldn't it have turned the knob? Did it turn the knob?

A I don't think I got to that point. I braced myself just about the time that I touched that knob. I was thrown off and I braced myself with the other hand. That is why I had the hand on that knob.

Q Who was it who grabbed you around the ankles?

A I couldn't testify.

Q You were not certain?

A Exactly.

Q You didn't at that moment turn around to see?

A That is correct.

Q As you were facing the door, was it somebody to your left or to your right or what?

A All I know is that both my legs were grabbed.

Q Both your legs were actually grabbed?

A Yes, in the vicinity of the ankles.

Q So that you could not have moved approximately further than three feet to the door, is that right?

A That is right.

Q Did the fact you were grabbed around the ankles, didn't that in a sense actually disturb you?

A It certainly did.

Q Didn't you think to look to see who grabbed you?

A I was concerned about not falling on anybody or stepping on anybody. In fact, the young lady that was seated there, I could have fallen right on top of her. I felt somebody bracing me as I was falling.

Q You felt somebody bracing you?

A Trying to h old me from falling over.

Q You don't recall who it was?

A No, I don't.

Q One of the students?

A Not one of the students, because they were seated below me.

Q Bracing you from where?

A From the side. From the side or back.

Q Somebody was bracing you from the side or back?

A Yes.

Q Who was that?

A I don't know. I just felt the sensation of somebody holding me.

Q When you turned around you didn't see anybody?

A I didn't turn around.

Q You turned around after some time?

A I stepped off and stepped back. I don't remember turning around.

Q You stepped off which way, to the right or to the left?

A To the left.

Q Your left as you faced the door?

A Correct.

Q And you were about three feet and moving slightly further away fromthe door?

A I braced myself away and moved off.

Q To the left in a direction away from the door?

A That is correct.

Q Do you don't know who was immediately behind you who prevented you from falling either to your left or to your right?

A No, I don't.

Q When you were pitched forward or fell forward or whatever, did you fall more on your left side and toward your left or more on your right side and toward your right?

A I couldn't tell you that.

Q Or did you fall directly forward?

A I think the first sensation I got was moving forward. Then after that to the left and it is the side I came out eventually, to the left.

THE CHAIRMAN: Would it be helpful, Mr. Rachlin, if you were to show Capt. DeNisco this photograph, Students' Exhibit 2?

MR. RACHLIN: I don't think so. The panel can analyze the statements he has made in light of the picture. I don't think it is necessary to show it to him. The captain is a very articulate and intelligent man. He can describe what has happened. All I am merely trying to get is precisely what he says took place. Whatever that has to the picture, has to the picture.

BY MR. RACHLIN:

Q You say some time during the late morning or early afternoon somebody in fact went through?

A Yes.

Q Did that person stay there or did that person eventually come out?

A I know eventually he came out. I wasn't there at the time.

Q So you don't know how long that student stayed?

A That is correct.

Q Let me ask you to search your memory a moment. After that student, you saw the student apparently bearded from what you described, enter the room? How long did you remain in the vicinity of that room while he was in there before you left?

A I don't know.

Q 15 minutes, 20 minutes?

A I wouldn't know. I don't recall at all. There were many times I had to leave the scene to go inside and make phone calls.

Q In any event, the students didn't prevent that person from going in, whoever it was?

A That student, I had a conversation with him. There were several students that were trying to persuade these students to stop from SDS, I gather, and this person was bent over talking in the same way and then I saw him get up and went through the door.

Q All of a sudden he got up and went through the door?

A Yes. There was a tapping on the door first.

Q They opened it from the inside?

A I believe so.

Q In other words, the student didn't try to open the door himself?

A I don't know about that. In fact, my picture is I just saw the student going into the room after the conversation in a kneeling position with some of the students that were seated.

Q Apparently nobody grabbed this student about the ankles, I gather?

A That is correct.

Q Nobody tried to physically prevent him from going into that room?

A That is correct.

Q I gather nothing untoward happened in the room or you would have known about it while the student was in there?

A That's right.

Q I gather from the fact the people inside let him stay there was they weren't particularly afraid of what was going to happen?

A I gathered the same opinion.

MR. RACHLIN: Nothing further.

DEAN SULLIVAN: Capt. DeNisco, there has been a lot of talk about whether or not that door was locked or unlocked.

If you saw a student go into the room, can you presume that the door was unlocked?

THE WITNESS: Well, it all depends whether he turned the knob or the person on the inside turned the knob. I am unable to testify to either. I didn't see who turned the knob to let him in.

DEAN SULLIVAN: Is there a snap lock on that door?

THE WITNESS: It is a snap lock with a button. It is capable of being locked from the inside.

DEAN SULLIVAN: To your knowledge, did the student request permission to enter the room? Did he knock on the door first?

THE WITNESS: There was a tap on the door.

MR. SULLIVAN: Was there any indication that the two CIA agents inside were agreeable to have the student come in?

THE WITNESS: I didn't see them until they came out.

THE CHAIRMAN: Have you seen this photograph, Capt. DeNisco, Students' Exhibit 2?

THE WITNESS: No.

THE CHAIRMAN: After examining it, can you say whether that photograph appears to have been taken at the time you were describing your effort to get into Room 606?

THE WITNESS: Yes, sir.

THE CHAIRMAN: Was that the only time that day when you tried to get into Room 606?

THE WITNESS: Yes, it was.

THE CHAIRMAN: Do you know that the student who was talking to those sitting down was a member of SDS?

THE WITNESS: Not of my own knowledge, no.

THE CHAIRMAN: You stated that he tried to persuade them to discontinue?

THE WITNESS: There were several students that did that, tried to persuade them not to continue their sit-in and as far as we were concerned, it was told to us they were from SDS. We don't know definitely.

THE CHAIRMAN: Do you recall any of the conversation that took place between the students who were sitting down and the students who were trying to persuade them to leave?

THE WITNESS: Just general bits of it. SDS at one point--one of the students said that SDS was wholly in accord with their protest but not with the particular tactic used of blocking or whatever.

THE CHAIRMAN: This was said by one of the students standing up, not by one of the students seated?

THE WITNESS: Yes, and I came to that conclusion as a result of that conversation.

BY MR. RACHLIN:

Q Captain, do you know whether the student that actually went in or not had an appointment with the CIA representatives?

A No.

Q You have no knowledge one way or the other?

A No.

THE CHAIRMAN: Prof. Jones?

EXAMINATION BY PROF. JONES:

Q Capt. DeNisco, do you have any doubt at all whether you were grabbed about the ankles as you attempted to enter the room?

A No doubt whatsoever. Both legs were grabbed.

PROF. JONES: No further questions.

DEAN SULLIVAN: After examining this photograph, Capt. DeNisco, is your memory of the event changed in any way?

THE WITNESS: No.

DEAN SULLIVAN: Mr. Chairman, would it be possible to have that photograph blown up?

MR. RACHLIN: Certainly. I will try and find out who took it. We will be glad to have it blown up.

PROF. WARNER: Capt. DeNisco, upon losing your balance I would like to be very clear about this.

Did you lose your balance because your ankles were grabbed or did you lose your balance becuase you tried to avoid stepping on people? What was the exact reason for losing your balance?

THE WITNESS: I was careful not to step on people. In fact, I put my foot between two of the persons and as I went to take my second step or third step, I have no idea exactly, my legs were grabbed, both legs. First I felt-- I think I had my right leg back. I felt it there than I felt it on the other then I felt the sensation of not being in control of my balance.

DEAN SULLIVAN: Is it possible whoever grabbed you was trying to steady you?

THE WITNESS: No. It was a grab. The first sensation I had of grabbing I had the foot on the ground, my right foot on the ground. I felt the sensation of grabbing then there was the grabbing of the other leg and I toppled forward to the left.

DEAN SULLIVAN: Would you say it is conceivable whoever grabbed you might have been trying to steady you rather than obstruct you?

THE WITNESS: There is a possibility of anything.

THE CHAIRMAN: Thank you, Capt. DeNisco.

(Witness excused.)

THE CHAIRMAN: Do you have any other witnesses?

PROF. JONES: I thought it might be helpful for the panel to hear from the photographer who took the picture that was identified as having taken the picture identified by Mr. Rachlin. I was talking about the picture showing the student entering the room.

THE CHAIRMAN: Students' Exhibit 3 for identification.

MICHAEL JAHN, resumed the stand and testified further as follows:

EXAMINATION BY PROF. JONES:

Q Did you take this picture?

A Yes.

Q Do you recall at what time the picture was actually taken?

A I dont' recall what time. It was in the vicinity of noon some time. It was late on in the day.

Q Could it have been as late as one o'clock?

A Conceivably. I am not as aware of the time as I should be.

Q Do you know who this is entering the room?

A No, I do not. There is one student in the room who may or may not be him or could just be of a physical type which is similar.

PROF. WARNER: Was it a student?

THE WITNESS: It was a student. If you would like me to describe what happened.

THE CHAIRMAN: If you can.

THE WITNESS: I recall seeing a student, at least I assume he was a student, he was of that general age and carrying books.

PROF. WARNER: Did he have a beard?

THE WITNESS: He had a beard.

THE CHAIRMAN: He must have been a student.

THE WITNESS: I saw him come from outside of the group. I had the impression he had just come in the door or out the elevator. He walked to the far end of the group, put his books down and I believe took his coat off, say something to the group. One of the things he said was, "I have an appointment." The group made way for him and he went up, knocked on the door and I then had the impression that the door was being latched fromthe inside--

MR. RACHLIN: Latched or unlatched?

THE WITNESS: Unlocked from the inside. I can't say definitely. That is the way it seems to me. The student went inside. I didn't see him emerge and I have no idea how long he stayed there.

THE CHAIRMAN: You recall him having said he had an appointment?

THE WITNESS: Yes.

THE CHAIRMAN: And the group then made way?

THE WITNESS: Yes.

THE CHAIRMAN: Did they like the Red Sea part or did he step over bodies to get to the door?

THE WITNESS: A little bit of both, but they definitely parted.

THE CHAIRMAN: And he knocked on the door?

THE WITNESS: Yes.

THE CHAIRMAN: And eventually was admitted inside the room?

THE WITNESS: That's right.

THE CHAIRMAN: You stated that he resembles in bodily type someone who is presently in the room.

Can you identify that person?

THE WITNESS: It could conceivably be this gentleman here or someone that resembles him, this gentleman leaning on his hand.

PROF. WARNER: He has a beard.

MR. RACHLIN: I am going to ask nobody to say anything one way or the other. You can identify whoever you want to. I would rather have no comments from the audience.

THE WITNESS: Excuse me for stereotyping you if you are not.

THE CHAIRMAN: It could be relevant, Mr. Rachlin, if we were able to establish whether this was in fact the man who went into the room and if so whether he had an appointment that day to be interviewed by the CIA.

MR. RACHLIN: Frankly, I am satisfied with the testimony as it stands right now.

THE CHAIRMAN: I don't think it is a matter of satisfaction. I think any fact that this body can establish will be helpful to it at the hearing's end. He is certainly privileged not to identify himself and also privileged not to indicate whether he in fact was the man that entered the room.

PROF. JONES: I will put the question to him.

A VOICE: I have nothing to say at the moment.

BY PROF. JONES:

Q When the student arrived outside the room, did the other students seem to know him?

A Yes.

Q Did they seem to be friendly with him?

A Yes.

Q Was the conversation he had with these students a serious conversation or joking conversation?

A It seemed more joking. I had the impression when he first walked in he was joining the group and was just going to put his books down and sit down at the far end and then as I said he said something. There was some conversation which led me to believe that he had been asked why he wanted to go inside and he made the statement, "I have an appointment," and went inside.

Q Does that describe all that you recall about the incident?

A Basically.

THE CHAIRMAN: Any other questions of Mr. Jahn?

Thank you, Mr. Jahn.

(Witness excused.)

PROF. JONES: Mr. Chairman, I would like clarification of a ruling. You say that the gentleman is privileged not to testify? As I understand it, he is privileged if he claims the privilege. I intend to call him and ask him to claim privilege.

Will the gentleman please take the stand?

MICHAEL FRIEDMAN, called as a witness, testified as follows:

EXAMINATION BY PROF. JONES:

Q Will you please state your name and position with the University?

A Michael Friedman. Graduate faculties in English.

Q Were you on the sixth floor on February 8th?

A Yes, I was there. I had an appointment.

Q You had an appointment with the CIA agent?

A I made the appointment with the employment service.

In the normal course I filled out a resume.

Q With a view toward obtaining employment with the CIA?

A With a view to having an interview with the CIA.

Q If you had been offered a position with the CIA--

THE CHAIRMAN: Wait a minute.

MR. RACHLIN: I object to that.

(Laughter)

PROF. JONES: Mr. Chairman, the point of the question is to simply bring out the fact that among their other activities, the group of sit-ins may have been engaged in setting up appointment for frivolous reasons.

THE CHAIRMAN: I don't think that is a matter properly before us.

PROF. JONES: It would make a difference if the student on the one hand was a person seriously seeking employment with the CIA and the group permitted him to enter.

THE CHAIRMAN: I will not permit that.

THE WITNESS: If it was frivolous--

MR. RACHLIN: Mr. Friedman, nobody asked you a question.

BY PROF. JONES:

Q D id you know the members of the group sitting in front of the room? Are you acquainted with them?

A I knew some of them.

Q Did you belong to any organization? Did you belong to the SDS with them?

MR. RACHLIN: I will object to that question as being irrelevant.

THE CHAIRMAN: Yes. Before you ask any further questions, I wanted to find that place in the transcript where Mr. Clark testified as to the appointment schedule to see whether Michael Friedman--

MR. RACHLIN: He was one of them. I recall the name.

PROF. JONES: I recall the name.

MR. RACHLIN: I don't know what time the appointment was for.

BY PROF. JONES:

Q Mr. Friedman, how long were you in the room?

A 25 minutes, 20 minutes.

Q During which time you were discussing employment opportunities at CIA?

A Yes, I was.

PROF. JONES: I don't have any further questions, Mr. Chairman.

DEAN SULLIVAN: Mr. Friedman, there have been dark rumors that a sale of the IRA has been established on the CCNY campus. You are not associated with them in any way here at Columbia?

MR. RACHLIN: He does look a little bit like Parnell.

DEAN SULLIVAN: After the fall, yes.

THE WITNESS: That is clearly out of order.

THE CHAIRMAN: Mr. Friedman, on page 62 of the transcript, Mr. Clark testified that a gentleman by the name of Michael Friedman had an 11:30 appointment with the CIA.

THE WITNESS: T hat's right.

THE CHAIRMAN: Is 11:30 when you arrived for your appointment?

THE WITNESS: I arrived five minutes late.

THE CHAIRMAN: And you were allowed into the room?

THE WITNESS: I was allowed into the room.

THE CHAIRMAN: And you left after about 25 minutes?

THE WITNESS: That is correct.

THE CHAIRMAN: Did you have any discussion with the CIA representatives about the demonstration?

THE WITNESS: No. They never referred to it. Rather amazing at that.

THE CHAIRMAN: I don't think that is necessary.

Any other questions of Mr. Friedman?

Thank you.

(Witness excused.)

PROF. JONES: I have only one further witness and I think his testimony will take only a few minutes.

THE CHAIRMAN: All right.

MANUEL HERNANDEZ, called as a witness, testified as follows:

PROF. JONES: These pictures have been shown to Mr. Rachlin and he has no objection to their introduction. Mr. Wolf, who represents Mr. Fioravanti wanted to establish the time which they ere taken.

EXAMINATION BY PROF. JONES:

Q Mr. Hernandez, during what period of time did you take pictures?

A Between 1:00 and 3:00.

Q These pictures were taken between 1:00 and 3:00 in the afternoon?

A Yes.

PROF. JONES: Does anybody want them to be identified more specifically than that?

MR. RACHLIN: Not unlesssomeone wants something more specifically.

PROF. JONES: These will be Q, et cetera.

These were taken by Mr. Hernandez and developed by him.

There is no objection to their introduction in evidence.

THE CHAIRMAN: No. 33 is University Exhibit Q. 29 is University Exhibit R. 35 is University Exhibit S. 32 is University Exhibit T. 31 is University Exhibit U.

(Group of photographs, marked University Exhibits Q through U in evidence, as fo this date.)

PROF. JONES: Any questions of Mr. Hernandez?

MR. RACHLIN: I have no questions.

PROF. JONES: That concludes the University's presentation.

THE CHAIRMAN: We will adjourn until nine o'clock tomorrow morning.

MR. RACHLIN: I would think thereiisaa good chance we might be able to finish.

(Time noted: 1:50 p.m.)

INDEX

WITNESSES

	EXAMINATION BY	PAGE
William E. Kahn	Mr. Rachlin	144 237
	Mr. Jones	218
Michael Jahn	Mr. Jones	149 161
	Mr. Rachlin	153
John W. Alexander	Mr.Jones	164
Irving De Koff	Mr. Jones	200 214
	Mr. Rachlin	204 217
Adam DeNisco	Mr. Jones	274 293
	Mr. Rachlin	281
Michael Jahn	Mr. Jones	296
Michael Friedman	Mr. Jones	302
Manuel Hernandez	Mr. Jones	306

EXHIBITS

UNIVERSITY		PAGE
J	Photograph No. 18	150
K	Photograph No. 25	153

INDEX OF EXHIBITS CONTINUED

UNIVERSITY		PAGE
L	Document	175
M	Handbook	178
N	Letter dated February 8, 1965	179
O	December 9, 1966 issue of the Spectator	179
P	Book of University rules and regulations	220
Q-U	Group of photographs	307
STUDENTS'		
2	Photograph	254
3	Photograph	257

MSS SEDFRE
546

COLUMBIA UNIVERSITY – CIA HEARING, 1966-1967

Box 35
Folder 15

State Historical Society of Wisconsin

Please Retain Original Order

COLLEGES WIDEN ROLE IN DEFENSE

Special Research Unit Gains University of Chicago as Its Ninth Member

JAN 3 1961

Special to The New York Times.

CHICAGO, Jan. 2—The University of Chicago has become the ninth member of the Institute for Defense Analyses, Dr. Warren C. Johnson, the university's Vice President for Scientific Affairs, announced today.

The Institute of Defense Analyses is an association of universities set up to help the Government solve national security problems. It describes itself as "scientific servant to the Government."

It is institutionalizing the role of the university scientists who divide their time between secret Government projects and their campuses.

It has drawn little public attention, but it is an important development in the world of science, according to experts at the university.

The Major Officers

Its chairman is Dr. James R. Killian Jr., former science adviser to President Eisenhower and now Chairman of the Corporation of the Massachusetts Institute of Technology. Its president is Garrison Norton, a former Assistant Secretary of the Navy. Laurance S. Rockefeller and Grayson Kirk, president of Columbia University, are among its trustees.

The institute functions somewhat similarly to the RAND Corporation, but on a wider scale. The RAND Corporation is a non-profit institution devoted to research in the fields of science that are of special interest to the Air Force. It takes the name RAND from the explicit identifying phrase Research and Development.

The Institute of Defense Analyses, called IDA for short, was created at the request of the Defense Department and is now expanding its studies from purely scientific problems to "areas of world relationships and responsibilities."

Members of Institute

In addition to the University of Chicago the institute's members are M.I.T., Columbia, California Institute of Technology, the University of Michigan, Pennsylvania State University, Stanford University, Tulane University and Case Institute.

IDA performs some experiments on its own, but more typically it acts as a bridge between the academic world and the Government, providing consultants and keeping informed on men who can be called into Government service.

It operates in a gray area between the Government and campus, at times paying the salaries of scientists who are working in Government offices.

It is flexible. It can cut red tape. It can avoid cumbersome civil service rules and salary schedules.

In short, it makes it possible for the Government to get the services of experts who might be reluctant to leave the academic atmosphere for full-time Government employ. It is obviously one answer to advanced Soviet scientific programs.

Organized in 1956

IDA was organized as a non-profit corporation in 1956 with an initial grant of $500,000 from the Ford Foundation.

The basic theory was that national security was closely tied to scientific research and a new tool was needed to permit the Government to reach into the pool of knowledge in universities.

Most of its work is highly classified, but the addition of the University of Chicago to the group is another step toward broadening its scope.

It is involved in a study of disarmament and can be expected to pursue such studies as those aiming at a workable definition of the term "disarmament," centralized planning for peace, disarmament and foreign policy and technical aspects of disarmament.

One of its chief units is the Weapons Systems Evaluation Division, which works closely with the Pentagon. The division works within the area of selection, that is, deciding which of any given number of multimillion dollar projects is the best.

IDA also has a unit—the Advanced Research Projects Division, that has worked closely with the Government's Advanced Research Projects Divi-Agency. This is an agency set up to speed space projects. When it was shifted away from developmental work into more basic research the IDA division moved along with it.

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P

Important That This Regulation Never Made available To Students

[Dec. 9, 1966]

Columbia University
in the City of New York
NEW YORK 27, N.Y.

OFFICE OF THE VICE PRESIDENT

MEMORANDUM

To: Appropriate University Officers

From: The Vice President

Subject: Picketing and Demonstrating within University Buildings

The principles outlined in the President's statement of February 1965 concerning picketing on the Campus are also applicable to demonstrations within University buildings.

Because of the greater possibility of demonstrations within buildings disrupting University activities, certain ground rules are outlined below, within which demonstrations and picketing must be confined:

1. No group may be admitted into a private office or reception area unless invited, and then not in excess of the number designated or invited by the occupant.

2. Corridors, stairways, doorways, and building entrances may not be blocked or obstructed in violation of the regulations of the New York City Fire Department or of the University. Clear and unimpeded passageway must be maintained at all times.

3. Classrooms and other rooms of assembly may only be occupied when assigned through properly established University procedures.

4. Any noise which interferes with the work or study of persons in a building will not be permitted.

XERO COPY XERO COPY XERO COPY XERO COPY
XERO COPY XERO COPY XERO COPY XERO COPY

5. Buildings must be cleared at the normal closing time for each building unless arrangements are approved in advance.

6. Littering buildings is prohibited.

December 9, 1966

Distribution:

Dean John Alexander
Dean Wesley Hennessy
Dean David Truman
Dean Clarence Walton

Captain Adam De Nisco
Mr. Wesley First
Proctor William Kahn
Mr. Thomas McGoey
Mr. Joseph Nye
Captain Harold Poulsen
Mr. William Whiteside

Columbia University
in the City of New York
NEW YORK, N.Y. 10027
PRESIDENT'S ROOM

February 14, 1967

Mr. Michael McCann
830 West 177th Street
Apt. 30
Brooklyn, New York

Dear Mr. McCann:

This is to inform you that I have appointed an Advisory Panel, consisting of student, faculty and administration representatives, to investigate an apparent and serious violation of university regulations in which you may have been involved. It will be the function of this Panel to recommend to me such disciplinary measures as in their judgment may be appropriate. In due course, you will receive a summons to appear before the Panel. At this hearing you may be accompanied by a faculty adviser of your choice, your parents and two student observer-friends.

Faithfully yours,

Grayson Kirk

GK:bg

Columbia University
in the City of New York
New York, N.Y. 10027

February 15, 1967

Dear Mr. Dillon:

The Advisory Panel, which has been formed to consider the sit-in demonstration occurring at Dodge Hall on February eighth, has scheduled hearings to begin on Monday, February twentieth, at 2 p.m. The hearings will be held in the Faculty Room, 207 Low Library.

As one who has been charged with taking part in the demonstration, you are asked to appear when the hearings begin. You are privileged to bring with you an advisor of your choice from within the University, and, in addition, you may bring as observers your parents, (if married, your husband/wife) and two student-friends. You will be given the opportunity to call and examine witnesses, and as witnesses in your behalf, you may have two persons to testify as to the events on which the charges are based or to testify generally as to your character.

As soon as is convenient, and, in no event later than Monday noon, February twentieth, please advise me in writing, Room 8 E 5 Law School, who these persons will be. This request is necessary to limit admission to the hearings to persons in the aforesaid groups and to representatives of the student press.

Should you wish to submit the statements of additional witnesses as to your character or the events of February eighth, you may do so in writing; additional witnesses, however, will not be permitted to testify orally other than in unusual circumstances.

Should you prefer that the charges against you be heard without the other students who are being charged being present, and with representatives of the student press in attendance or not as you wish, your request will be acceded to. The request should be made in writing, directed to and received by me before 9 a.m., February twentieth, or, alternatively, it may be made orally at the outset of the hearings.

The charges which have been made against you are: interference with a University activity; refusal to obey a University officer performing his duties; and refusal to identify yourself or to present your ID card when asked to do so. For your information, there is herein enclosed the text of a statement by President Kirk, which appeared most recently in the December 9, 1966 issue of the Columbia Daily Spectator.

Sincerely,

Curtis Berger

Curtis J. Berger
Chairman, Advisory Panel

Mr. Robert Dillon
134 West Eighty-second Street, Apartment 56
New York, New York

February 20, 1967

As members of the faculty of the Columbia University School of Social Work we wish to convey to you the following sentiments concerning the students involved in the recent interference with the recruitment activities of representatives of the Central Intelligence Agency. One of our students is among the group coming before you for consideration for disciplinary action. In expressing these ideas, please be assured that this in no way reflects any lack of appreciation for the difficult task you face or any lack of respect for your capacity to render fair judgment.

We understand that the students did in fact violate university regulations in their action, which we do not necessarily condone. The recent disclosures regarding the extent and nature of the corruptive influences exerted by the C.I.A. in the life of the academic community must necessarily cast its shadow upon these events. There is no doubt in our minds that the moral issue to which the students addressed themselves is indeed a real and cogent one for all faculty in this and other universities. We therefore hope that you will take into account the deep moral feeling of the students that led to their act of conscience, and that your sense of justice will be tempered by your compassion for the dilemma these complex social issues pose for the individual.

Dear Mr. Berger,

Here is a list of the people the students being represented by Mr. Rachlin wish to bring to the hearing:

Henry
Malcolm

John Cannon

Antony
Terry

__Witnesses:__

John Sinisi
Michael Friedman
Allen Krebs
Conrad Lynn
Russell Stetler
Lyndon Marcus
Ralph Della Cava
Peter Haidu
Robert Wolff
Michael Klare
Seymour Melman
David Gilbert
Jeffrey Gordon
Simon Slavin
Richard Tristman
Marvin Harris
Ira Perlson
Paul Gallagher
Charles Lindholm
Barbara Meister
Michael McCann
Elsie Chandler
Alexander Alland
Sidney Morgenbesser
Paul Rockwell

__Relatives:__

Phyllis Dillon
Jane Sangster
Robert Bobrick
James Newton
Dr. and Mrs. Dillon

__Student-Friends__

Dianna Ralph
Frederick Newdon
Michael Jesephowitz
Nicholas Gruenberg
Louis Cole
Theodore Kapchuk
Michael Reshetnik
Alfred Szimansky
Jeffrey Newman
John Schidlovsky
Jessica Holland
Peter Friedland
Paula Lieber
Joseph Willingham
Richard Goldberg
John Evansohn
Peter Seidman
Glenn Abrett
Judy Liczko
Douglas Gladstone
Richard Stanley
Mark Rudd
Audrey Bomse
Anne Cameron
Susan Crowell
Ronald Carver
Michael Flug
Gloria Kestenbaum
Robert Cover
Geoffrey Field
Richard Fioravanti

__Advisors:__

Frederick Grab
James Shenton
Paul Zweig
Eric Bentley
Raymond Lubitz
Richard Greeman
Dotson Rader
Michael Ross
Harlan Hoisington
Simon Slavin
Paul Gallagher
Paul Rockwell
Louis Lusky
Daniel Gershenson
Robert Wolff

The following students represented by Mr. Rachlin wish to be heard collectively:

Benson Bobrick
Robert Peter Bobrick
Robert Dillon
Susan Kaplow
Michael Melzer
John Jacobs
George Gruenthal
James Newton
Rihcard Sober
Edward Spannaus
Antony Papert
Roger Taus

The following, also represented by Rachlin, want to be heard separately: Chris Ijima and Michael McCann.

Sincerely,

Antony Papert for the students
represented by Rachlin

observed in the said college, and also to select and appoint by ballot or otherwise, a president of the said college, who shall hold his office during good behaviour; and such professor or professors, tutor or tutors, to assist the president in the government and education of the students belonging to the said college, and such other officer or officers, as to the said trustees shall seem meet, all of whom shall hold their offices during the pleasure of the trustees; *Provided always*, That no such professors, tutor, or other assistant officer shall be trustee.

To appoint President, Professors, and Tutors Officers

Proviso

III. *And be it further enacted*, That if complaint shall be made in writing to the said trustees, or their successors, by any member of the said corporation of any misbehaviour in office by the president, it shall be lawful for the said trustees, or their successors, from time to time, upon examination, and such due proof of misbehaviour, to suspend or discharge such president, and to appoint another in his place.

President how removed

IV. *And be it further enacted*, That eleven of the said trustees, lawfully convened, as is hereinafter directed, shall be a quorum for the despatch of all business, except for the disposal of real estate, or for the choice or removal of a president, for either of which purposes there shall be a meeting of at least thirteen trustees.

Eleven Trustees a quorum, Thirteen to sell real estate, &c.

V. *And be it further enacted*, That the said trustees shall have full power and authority to elect by ballot their own chairman once in every year, or at such other periods as they shall prefer.

Chairman elected by ballot

VI. *And be it further enacted*, That the said trustees shall also have power, by a majority of votes of the members present, to elect and appoint, upon the death, removal out of the state, or other vacancy of the place or places of any trustee or trustees, other or others in his or their places or stead as often as such vacancy shall happen; and also to make and declare vacant the seat of any trustee who shall absent himself from five successive meetings of the board; and also to meet upon their own adjournment, and so often as they shall be summoned by their chairman, or in his absence by the senior trustee; whose seniority shall be accounted according to the order in which the said trustees are named in this act, and shall be elected hereafter; *Provided always*, That the said chairman or senior trustee shall not summon a meeting of the corporation unless required thereto in writing by three of the members; *And provided also*, That he cause notice of the time and place of the said meeting to be given in one or more of the public newspapers printed in the City of New York, at least three days before such meeting; and that every member of the corporation resident in the City shall be previously advertised in writing of the time and place of every such meeting.

Vacancies in the Board of Trustees

Adjournments

Special meetings

THE SENSES IN WHICH CIA IS ANTI-THETICAL TO THE FUNCTION OF A UNIVERSITY

THREE EXAMPLES OF HOW THE CIA ACTUALLY PERVERTED THE PURSUIT OF TRUTH

SUM:

(1) Michigan State University Project, where professors treated as organs of the warfare state. Ramparts______

(2) George Carver, analyst for the CIA, wrote article in Foreign Affairs, under guise of independent scholarship. See New York Times April 29 dateline, 1966. Article entitled "The Faceless Viet Cong"

(3) Just disclosed. New York Post Feb.23,1967. Praeger, a major book publisher, with concentration on international affairs, especially Russian and Chinese economic-idological problems, helped and received help from CIA.

ADDITION: The CIA undermines our democratic institutions. Example: The Eric Heine slander case. Heine sued the CIA agent; the agent did not deny the charge. But the Court could not hear the case because would lead to too much disclosure. See: Times, April 28, 1966, Times April 26, 1966, plus commentary in The Nation, May 9, 1966, and New Republic, May 14, 1966.

ARGUMENTS

(a) The CIA is inherently secret; its records and many of its activities not open to scrutiny. Consequently, Mr. Clark's principle that University can stop organization on basis of ethics inapplicable. The CIA itself does not offer a basis for an judgment. On what basis can Clark judge its ethicality if it is secret? Only basis is outside articles. But most reports on CIA activities show that it is a depraved organization.

(b) The CIA came to recruit, not to speak. Even if the Gestapo had the right to speak at Columbia, it would certainly not have the right to recruit for its activities. Recruitment must be considered part of an activity.

Will decisions of panel be public, at least open to defendants?

Poll panel? by name?

THE CIA & COLUMBIA

On Feb. 8, 18 students prevented CIA recruitment at Columbia by sitting down in front of the recruitment office. Backing the CIA, the University Administration demanded the students leave and threatened them with expulsion. Fearing the impact of the students' token victory, the Administration has hastily convened a disciplinary hearing -- without notifying the students of its procedure. This hearing will start at 2:00 today in Rm. 207, Low Library.

SUNDIAL\1:00 RALLY

SPEAKERS INCLUDE

LINCOLN LYNCH; CORE

ALLEN KREBS; Director, Free School of New York

LLeslie SILBERMAN; former Congressional Candidate,
Inderpendant Party, Queens

CONRAD LYNN; Noted Civil Liberties lawyer

RUSS STETLER; Executive Secretary, Bertrand Russell Peace
Foundation (inUSA)

L. MARCUS; Economist and teacher at the Free School of N.Y.

PRESTON WILCOX; Columbia School of Social Work

PAUL ROCKWELL; Columbia Student; Editor of Gadfly magazine

AND OTHERS

Sponsored by those who sat in and by the
Columbia Independant Committee on Vietnam

to vote.

VOTE

College

Hamilton 10 A.M. - Noon
F.B.H. Noon - 3 P.M., 5 P.M. - 7 P.M.
John Jay 5 P.M. - 7 P.M.
Furnald
Carman 8 P.M. - 11 P.M.
Livingston

Engineering

Mudd 11 A.M. - 2 P.M.

(Engineers may also
vote on Friday,
from 11 A.M. - 2 P.M.)

Columbia SDS

Student Was In ~~[illegible]~~ Group
opposed to sitin

Dellon

Dinesco - stepped into
the crowd - no one as
far as I know grabbed
his leg - he stumbles
to the door - his hand fell
on the knob - it was
locked - & he
withdrew -

he stumbled because
of over close~~[illegible]~~ness

Phone calls 11:15-11:30

But He
Didnt
Act
As
Intermediary

University Action
In This Matter
Seems To Have
Been Premised
upon Cahn's Erroneous
judgment —

The higher ups
gave orders based
upon what Proctor Kahn
had told them e.g. that
CIA couldn't get out &
that it might be
dangerous for students
to go in. Decisions we
made upon ~~Kahn's~~ facts
related by Kahn

Friedman
just asked to go
in & no
discussion

Kirk is a member of the Bd of the Institute For Defense Analyses, ~~[illegible]~~ whose President is Bissell, the man who planned the Bay of Pigs Invasion.

Peter Friedland - Di Nesco at the door

Picture 19 - Friedman going through door

The statements of Dan DeKoff
contained some of the following:

You are a minority using force.

You are going to ruin this university like they did out at Berkeley.

You may be in danger of expulsion from the university.

it's going to be very difficult for you to get into another university

from - Alexander: I don't agree with everything the CIA does ~~but~~ myself but I don't agree with what you're doing.

You are only ones using ~~violence~~ physical force

There was more from De Koff - nasty ??

Normal function of U.

Normal U activities

McKay
Steinhauer

Do you want to ask him if all the pictures that we have represent all the pictures that he took   Yes
~~Was there~~ Pic

~~Were any of the pictures taken when the request for I. D cards and the request to leave were made~~

Ask Him: Do you believe that someone could walk through the student group and go up to the room?

What Specific
& Part of Discipline
section violated
by interference

Alexander said here "Whether or not I agree
~~[illegible]~~ with your views about the CIA,
you shouldn't sit in.

what he really said was.
I don't agree with a lot of what
the CIA does, but you shouldn't sit in

~~[illegible]~~ ~~about~~ ~~that~~

~~[illegible] said not one~~

He said you can [illegible]

Dean alexander
also threatened expulsion -
not only "disciplinary action"

Dillon

He said that we feel that we are representing the best interests of all the students not the views of all the students.

Tony
Says This
Is a
Total Fabrication

Paul —

the guy from placement said that the recruiting was done by outside people — the university only provided an empty room — isn't there a legal difference between that and an "official university function."

mike

3:30 Call Gwen

tell her

Tell her I
have a meeting
with a
FRANN SOUCI
tomorrow at 9:30
His telephone
number is in
my new tel
of my Course
~~at~~ for Cornell
~~Ple~~ The letter in the
tel will have

his ~~plan~~ ① telephone
[illegible] at his
plant and
② at the Union
Office
Please call him
call // this morning

Sept
Abels

Student's Exhibit #1 — Letter of 2/10/67 Letter Sent At Dean Truman's Instigation To Students Involved & Signed by Dean Alexander.

Cross - Exam — Mr Clark

First arrived at 11:00AM — there continuously till 4PM — Initially 12-15 — more arrived but doesn't know how many. Perhaps 5 or 6 more came, Can't tell which ~~ds~~ where there when. None who came originally left he believes. There were 20 there at 3:30 - 4. Asked to point out students who participated at any time during day & who don't stand. Doesn't see any sitting that he recognizes.

Doesn't know if door was locked. At what time or another Capt De Musco tried door & found it locked — at approx 11 AM 1st time. Says he doesn't know if door was locked at any point in day. Didn't see Capt try door. Entered room at end of day. Someone from inside opened it. Doesn't know how door opens from inside

At 11 AM 6-8 ft from Capt. ~~Wasn't~~

~~He~~ Doesn't recall if he was looking at Capt.

No one to his knowledge used any force on Capt & no unusual noise or disturbances. No disorderly conduct.

~~No written~~ Only written statement concerning who can or can't interviewer is Pres Kirks (M doesn't d make value judgment). Who can't use Columbia facilities — none in my tenure — at Harvard life insurence agent who said interviewee must have 100 names with him. Political organization can come without restriction. Any employer prior barred — Don't believe so.

Suspects CIA came in person. Usually go to Miss Ayers 1st if they have been here before. CIA was here last year (2/66). Knew of 3rd party relationship with Mich State faculty & CIA — but doesn't believe that this is 3rd party relationship he's talking about. Didn't discuss Mich State with CIA representative today he would let CIA appear on this campus

At 11:30 Harry Rosenthal came into his

room (605) Appeared 1st in his room. ~~Said~~

He said to students that he had student who wanted to enter room & received a denial - doesn't know by who

1130 Michael Freedman not allowed in

1:30 Frederick Stuart (MBA finance) same

2:00 ~~[illegible]~~ Uriel Dorn (PhD Math Stat)

3 Henry ~~Kassler~~ Caseler

3:30 Edmond Cohen (PhD Ind Relations)

He wasn't asked whether should or shouldn't let CIA back after Dec conflict.

CIA didn't convey message to him that they wanted to leave.

Only time this has happened

Panel — Felt there would be some trouble if CIA returned. Thought that ~~my~~ what happened might happened.

As director of placement no ethical problems with CIA. Others on campus do

1st time CIA came there was picketing on Campus Walk. After morning interviews took Russell to lunch, learned of picketing then, told Russell to go to his office, confirmed situation & Russell cancelled all interviews on Nov 16-18. No request that Feb 8 day not be conducted. Feb 8 11:00 - late aft. in no voice contact with CIA. Mr Dillen represented students. No co-spokesman.

Jobs CIA interviewing for - econ research in Wash wanted area knowledge & competance; acct & auditing - preparation & analyses

cartography (physical & cultural aspects) Engineers, scientists
military & econ research position, Current intelligence
& research position. No indication of cover activities
Office in NY 41st Street. Not specifically a recruiting
office, Russell from Brockton Mass, Mr Power from Wash
Were there interviews on Feb 7 Uneventful
Prior to Feb 7 he would say to request not to
hold interviews that he wouldn't cancel them
we can't decide which employers can interview
unless I have doubts as to ethics of employer
Would consider ethical consids.

Greenman Cross exam. Normal
relations with CIA. Normal to have a separate interviewing
times

Rachlin - Would consider ethical objections
Couldn't overrule Kirk

He wanted

I said ten to 15 of us were going up and anyone else who wanted to should follow.

Did he inquire of the CIA men the work they were recruiting for - what was the work they would be assigned?

Salaries

Conditions of employment?

Where?

or

Attorney behind you wants you to ask about working conditions CIA told him would be available for the students

---

He wants to expose all he can about the CIA & bring out all CIA involvement with Columbia

---

Mr Rachlin

Susan Kaplow & Tony will testify I wasn't there if you think it needed.

Mike McCann

Only asked to enter 3 times.

Mike Friedman entered + left.

ask him to testify.

- (completely discredit Clark)

Jim Fishman is in the office & he will take care of someone from Albany who is coming. She (Susan) is sending out letters to Yagoda and Abela. By the way, the NY Post and the Associated Press are monopolizing the telephones downstairs. Here is your dime - I didn't need it.

MR. Rachlin
We would like to be able to express why we were there. not deny the fact that we were there.
Thank you

~~Unless there is something against~~
~~the character of the CIA today nobody~~

CIA often feeds people into other organizations

Mich St

3rd part

Mr. Rachlin

~~We don't wish to deny that we were there; and we consider it irrelevant if the door was locked — if it wasn't locked all the better, because we are not denying that we locked the door.-~~

Tony-

Can you get Clark to state explicitly *what* ethical standards are applied.

For example: What about an organization which recruits students for *illegal* activities?

WHAT "ethical standards" applied? -

Paper

For Rachlin

About the rightist demonstrators at the sundial rally -

1) Were they carrying a sign fixed on large wooden sticks (they were).

2) Is this a violation of university regulations? (~~they~~ it is)

3) Was any action taken against them?

Tony –

When you get a chance, press this guy to say whether *any* organization at all would be welcome – a Nazi organization? the Mafia? etc etc.

RPWolff

I intend to
make him give SOME
me examples of
those refused

Defense Position

I [redacted] CIA As An Organization

  A. Famous Incidents

    1. Michigan State Case
    2. Hungarian Refugee Case
    3. Cuba
    4. [redacted] Inciting Labor Strikes In British Guinea
    5. NSA
    6 Joan Baez

  B. Subversive Nature Of Organization

    1 NY Times
    2. Funding Student & Labor Groups

II Reasonableness Of Student Position That Columbia Shouldn't Aid The CIA In Recruiting

  A. History Of Student Disorder When CIA Is Here
  B Subversive Nature Of CIA
  C Third Party Nature Of CIA Employment Practices (Mich State)

III Method Of Protest Used Was Not Unreasonable

  A. A student did pass through and was interviewed
  B Other interviewees (ex. 1) did not present themselves at the door.
  C. If a student had really wanted to enter, the only thing that would have stopped him was that the CIA had locked the door.

IV University Is Not Blameless

  A Clark expected student protests when the CIA returned in February & did nothing to calm student opinion
  B University gave students no alternative means for expressing their reasonable indignation.
  C In the light of recent disclosures, Columbia should sever ties with CIA

6. Agreement
7. Documents

Make Distinction
Between In front
& Not In Front

Cross Exam Dean De Koff

Made appt for George Gruenthal because George wanted appt at same time as Pagent

Mr

3 rows (approx) in layers

Didn't see students lay hands on anyone. No threat of physical violence. Dean Alex identified himself asked them to move, they were violating U regs, he wouldn't force them - when no response requested that they identify themselves & they didn't Mr Dellon as rep of all students of Col U & they were acting as group & were opposed to CIA No indiv asked to ~~[illegible]~~ ident themselves. Dean Alex didn't mention discipline so he brought it ~~[illegible]~~ up - students should be fully aware that they may be looking for another institution, I was thinking of ~~Sober~~ Rich Sober.

Wolfe Arrived at 11:50 & whole incident took 20 minutes.

Sullivan Recognized some students

Jones Students considered matter

Clark said nobody touched

Cross Exam Proctor Kahn

Appointed asst proctor 7/65 & 9/65 appt Sept. Asst proctor since 10/64. 1st became really aware of student discontent with CIA in 11/66. SDS had very intense views of CIA. Other students concerned too. Aware of discussion of students with Kirk (350-400 people) — unusual event. Kirk said I not making value judgments as to organizations coming on campus. He is a go between between students & admin but didn't indicate feeling of students about CIA but I told VP that SDS would demonstrate against CIA. Not consulted as to whether CIA should be allowed here. 10:40 group went to 6th floor. I arrived 10:45 & stayed till 12:15 but made 4 calls from Clark's office in 2 or 3 minutes. At sundial from 12:15-45 I learned that SDS would have meeting at basement of Dodge. At 1:15 student from SDS & having trouble with group from sundial so I went to basement of Dodge & arrived back at 6th floor at 1:30. There till 3:30. Capt DeNisco made effort at 11:15. At 11:30 I was there but don't remember seeing anyone attempt to go in. No attempt at 1:30, 2, 3, at 3:15 Dillon & Clark entered. I didn't see anyone go into the room. No one talked to people in the room. Don't know if door locked. Only Aires & DeNisco tried to go in

From door to corridor 7ft occupied by human bodies. On 3rd step at door. After 2nd one he was 3 feet from door. Leaned forward and was in danger of falling & someone grabbed his leg. He grabbed door not — looked like he was keeping himself from falling. Picture ~~x~~ is of Capt Dikesco. He has 2 hands on door & one is on doornob. Apparently trying to open door

No one asked CA to leave or if they wanted any lunch ~~x~~ I thought when Capt tried to get in he was grabbed. I was directly behind Capt. In ~~top of picture~~, perhaps I saw Mr Sober grab his leg. Picture shows Sober with arm around Dr Nasco's ~~x~~ leg.

Doesn't recognize Friedman entering room Didn't see this happen.

People were passing through the corridor.

Wolfe ~~M~~ Where can student learn of max penalty for an action — ~~[illegible]~~ He has no knowledge.

Varner Each student made aware of violation. 5 joined throughout the day that I knew of. Some went out for lunch.

Memo a regulation

but students never saw it

Since never seen by him

At Nov meeting with Kirk

Andrew Vitnas went in

Cross Exam Capt Denseno

Touched doornob & braced against the door. Doesn't know whether locked or unlocked. Never definitely said its locked. Never asked if they wanted to come out or if they wanted any food.

Never flush against the door - students were there. 3 ft between him & door. Pitched off balance against the door. Right hand on knob & left hand on door or doorjam. Both legs grabbed about angles, braced by someone & moved to left.

~~Someone~~ student went in but doesn't know when he left. Doesn't know how long he stayed around there. No one grabbed him as he went in & no one kept him from going in & nothing happened while he was in there.

Cross - Exam Dean Alexander

Students voluntarily submitted to identification & responsibility

Understood that activity wasn't frivolous & students willing to take responsibility

People put name on letter who weren't there & not sure that all these students were there or that all who were there signed — Only signed because Papert and he picked out

Telephone call from Truman called him saying V.P. wanted him to seek to identify & as U rep, ask students to leave. Got DeKoff & coat & went. Confused & didn't count # students

DeKoff reiterated what I said & threatened serious disciplinary action ~~D~~. He added "possible dismissal" ~~Dis~~ Don't remember DeKoff saying better luck at your next U

Not consulted until after CIA recruitment set. Asked to come to meeting with Lowe concerning picketing. No meeting of deans on this subject — Doesn't know that faculty was consulted

What ~~made this~~ U. activity referred to an interference charge — deces to office where interviews scheduled Burger Panel will decide if what was going ~~on~~ on inside room 606 was a U. activity

Discussed with VP, Truman, Delapodre, Sullivan students letter (Doc L)
→ Each dean in charge of his own kids.
Each dean was to hold

Over weekend Pres decided to handle matter this way

When he spoke to Deans he told them what he had seen & heard.

Did any student touch Clark's secretary

No No actual physical force beside sitting & no threats. Could only go through if she stepped on someone but no indication that they would stop her

According to customary procedures, matters of concience etc relevent to punishment

Letter of charges written by him

Coersion was their physical presence

Didn't read rules to students

STUDENTS WHO SAT IN

DESERVE A FAIR HEARING

CUSC has resolved that:

THE ADMINISTRATION, IN HEARING CASES OF STUDENTS INVOLVED IN THE CIA SITUATION, SHOULD USE THE PRINCIPLES OF DUE PROCESS OUTLINED IN THE PRESIDENT'S ADVISORY COMMITTEE ON STUDENT LIFE WORKING PAPER ON JUDICIAL PROCESS.

The working paper stated that a student has the right to

* Call witnesses on his own behalf
* Have access to all relevant information and to hear and question adverse witnesses
* Decline to testify against himself
* Bring an adviser of his choice, from within the university community

THE COMMITTEE ON STUDENT LIFE SHOULD SERVE AS THE HEARING BODY IN THIS CASE.

Apparently, the present Committee on Student Life does not wish to handle the case. A similar tripartite body should be set up, consisting of five students, four faculty and three administrators, as recommended in the Student Life working paper. This would be an ad hoc committee, for this specific case.

CUSC further resolved that:

WHATEVER PENALTY, IF ANY, IS ASSESSED AGAINST THE STUDENTS INVOLVED IF THEY ARE FOUND TO HAVE VIOLATED UNIVERSITY RULES SHOULD NOT PREVENT THEM FROM ENGAGING IN POLITICAL ACTIVITY ON CAMPUS

CUSC urges that the following considerations be taken into account:

FIRST, ANY UNUSUALLY HARSH DISCIPLINARY ACTION WOULD HAVE PARTICULARLY SEVERE LONG-TERM CONSEQUENCES FOR THE STUDENTS CONCERNED, ESPECIALLY CONSIDERING THE ISSUES INVOLVED.

SECOND, SUCH ACTION WOULD ALMOST INEVITABLY PRODUCE AN UNDESIRABLE ATMOSPHERE OF ILL-WILL AND HOSTILITY BETWEEN LARGE SEGMENTS OF POLITICALLY CONCERNED COLUMBIA STUDENTS AND THE ADMINISTRATION.

The Columbia University Student Council/608 Haskell Hall,
605 West 115 Street
2/10/67

(1) are you going to make separate speeches?

(2) Pass Cong. after hearing.

(3) Character witnesses; writers & lobbyists,

Evan Stark: public CCNY.

pol. value of

Schedule of meetings Meetings: Rackelin me + Captain

(1) Meet + I cross examine calling you as devil's advocate.

(2) Major information session — All see issue + info there.

Call Dekoff —

I interviewed on 51 [illegible]

Evan Stark

Coun

(1) pol value of Focus on CIA now — later we show how CIA is [illegible] to U + Gov.

Primary vulnerability — specificity;

Discuss everything you know nothing — can't fight whole war in one battle.

win the battle on CIA.

FOR: Att. Racklin

Dean DEKOFF:

"I hope you have fun looking for a new college."

Dean Alexander:

"I don't altogether disagree with your views on the C.I.A. but I don't think this is the way to go about it.

Both Deans indicated that we would probably be expelled.

Also: both statements quoted above contradicts Alexander Clark's statements as to what administration members said to us. i.e. they said more than simply:
[illegible] "Please hand over your I.D. cards", etc.

Dean DeKoff was very vicious in his approach.

Proctor Kahn Cohn also said that we were jeopardizing our future at the university.

Summation

① Moral Courage of Students – a) acknowledged their presence in front of the door. b) tried every other means of expressing their wishes to the University & were unsuccessful c) the students find the collaboration between Columbia & the CIA totally violative of their conscience & had no other outlet d) they have acted honestly, in a forthright manner, and consistently with their consciences, something that few people can say at any time in their lives.

② Subversive Nature Of CIA – a) Michigan State activity (faculty of Mich State in Vietnam included CIA operators) b) NSA activity c) called subversive by NY Times in 2/20/67 editorial d) this is certainly an organization which can reasonably be viewed as one whose activities are unconscionable and the moral committment of the students against Columbia U's participation and cooperation with CIA is a reasonable position

③ Seriousness Of The Possible Penalties – a) expulsion is academic capital punishment b) suspension is inappropriate for students expressing such a deep and reasonable moral committment
c) In view of the situation punishment will have the effect of inhibiting the entire academic community at Columbia & throughout the country from expressing reasonable moral indignation against improper university affiliation.

1 – Call Tony Barry
tell him to be [illegible]

2 — Call Basil Pollitt
not likely ~~[illegible]~~ but
be ready with this P.S. 122

3 – Small Story in
today's Times ~~emphasizing~~
giving answer to question
I asked. Marvin should call
TIMES & speak to them

VOTE NO

SDS urges all students to vote against the submission of class rank

The Columbia College Faculty has voted to oppose the current University policy of submitting Class Rank to the Selective Service. Used to determine draft status, the submission of this information implicates the University in the actions of the U.S. Government. It makes the instructor an unwilling agent of the Selective Service System; it subverts the educational process to the demands of the State. It makes the competition between students, not a healthy one over knowledge, nor even a merely unhealthy one over grades, but an intolerable one over who shall live. And who shall die.

A number of schools have already refused to permit this corruption of their educational process. They have refused to submit class rank, thus preserving the integrity of the student-teacher relationship. By doing so, they have explicitly asserted the autonomy of the University, and its independence of the War Machine. Implicitly, they have placed themselves in opposition to the Vietnam War by refusing to aid in the conscription of troops for an illegal and immoral venture- an inexcusable and unjust intervention in the internal affairs of other countries, in flagrant violation of international law. As an institutional decision no student can be held personally responsible: there is no evidence of increased conscription as a consequence of this action. Under the present "voluntary" system each student implicitly decides that every student must submit his rank; for it any ranks are sent the draft board must assume that anyone who doesn't send in his rank is in the lower two-thirds of his class.

We the undersigned accept mutual responsibility for the charges against Tony Papert & George Gruenthal. We feel that we have acted ~~that~~ collectively and correctly. The CIA has no human right to recruit on this campus or even to exist. In allowing the CIA access to the campus the University Administration is gravely involved in crimes against humanity. Since our actions were collective we request a collective hearing.

G.F. Robert D. Ullon
G.F. Susan Kaplow (Prof. Kaplow's wife)
C.C. John G. Jacobs
M.S. Roger J. Taus
3rd Barnard Jessica Holland, ~~Not~~ ; Jr. 230 Beach 142nd St. Neponsit, N.Y. 11694
C.C. James R. Newton ✓
C.C. Richard Rivarnuti ✓
C.C. Benson Baker Bobrick ✓
C.C. John Schidlovsky ✓
C.C. John Bauman ✓
S.W. Edward W. Spannans
C.C. Peter Bobrick ✓
C.C. Chris L. Iijima ✓
CC Harry Steinbauer (~~Not listed in [illegible] directory~~)
G.F. Michael McCann

9 college + Papert & Gruenthal
11 college

COLUMBIA DAILY SPECTATOR
9 December 1966

Text of Statement On Campus Pickets

The following is a statement released Wednesday by the President's Office:

In view of the fact that many persons have joined the Columbia University faculty, staff, and student body since the last publication of the University policy on picketing, it seems wise to publicize that policy again. Following is the text of a document from the President's office published on Feb. 8, 1965, and titled, "Memorandum to the University Community."

On occasion in recent years certain groups have manifested their attitudes toward announced University policies or practices by engaging in those activities commonly termed "picketing."

It has been suggested that a general statement of University policy concerning picketing should be made available to the Columbia community. The following summary has been prepared to meet this request:

1. The University recognizes the principle that peaceful picketing is a legitimate mode of expression in support of, or in opposition to, any policy or practice. It is one method, among others, whereby that freedom of opinion which is basic to the health of a democratic society may be exercised.

2. Picketing activities must be conducted in such a manner as not to interfere with the normal functioning of University operations or procedures.

3. Picketing activities may not encompass attempted coercion of others or recourse to, or incitement to, violence in any form.

4. Picketing activities may not be engaged in on University property or premises by individuals or groups unconnected with Columbia.

5. Since the University administration has the responsibility to ensure the maintenance of its normal operations and activities, attempted infractions of the above principles will be followed by a warning. If thereafter, and in disregard of this warning, violations should continue to occur, appropriate disciplinary action against the individuals concerned will be taken.

The University also does not permit the use of outdoor sound amplification systems on campus because the noise would interrupt classes and offices and disturb students studying in libraries or residence halls. This policy was established years ago when, after careful consideration, the University concluded that the best interests of students, faculty and staff would not be served by sound amplification out-of-doors. Loudspeakers are permitted and often used at indoor gatherings, such as meetings in McMillin Theatre, and at outdoor meetings at Baker Field and other areas away from the main campus.

Group theory

① find Ene of He ions

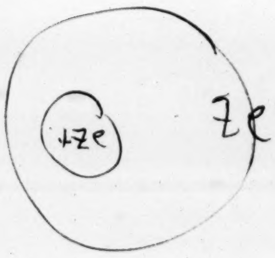
in 0th
1st
2nd order approx

② find best E of He in 1S state

w Gaussian wave fn

③ find E of hypoth atom

Z 1S^Z



Ze's ← all e's in 1S stat

1) standards of conduct clearly stated ✓

2) advisement of specific charges ✓

3) advisement of possible penalties ✓

4) right to call witnesses ✓

5) non-self-incrimination ✓

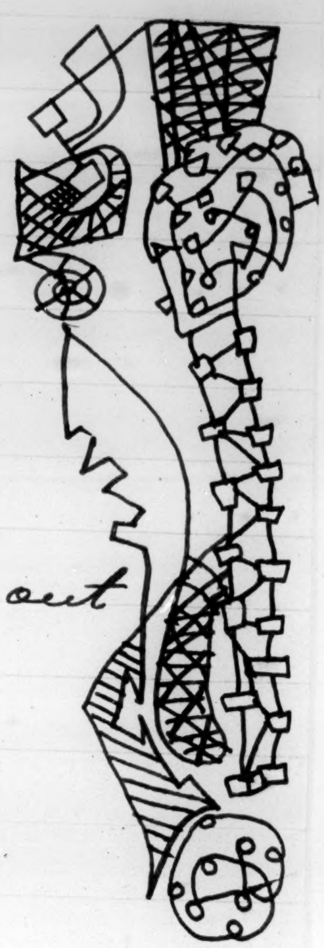
6) advisers ✓

7) decision based solely on matters brought out at the hearing. ✓

8) prompt ✓

9) [redacted] Record of the hearing ✓

10) Students may attend whole hearing ✓



Recipient of CIA funds:

included the Operations + Policy Research, Inc. of Washington, whose President, Dr. Evron M. Kirkpatrick, is executive director of the American Political Science Association.

— N.Y. Times, Feb. 19-'67

r. Peter Bobruck
Robert Dillon
Susan Caplan
John Jacobs
Anthony Papert

George Gruenthal
Richard Sober
reviously warned

---

hris Ijima
ichael McCann

2:45 117th Earl
110 Earl Hall Protestant

1. Ask for dismissal of entire case 1 member of panel
~~Langsam~~
2. Who is charging party

John Sinisi schidlovsky
Roger Taus
Mike Melzer
Edward Spannaus
Benson Bobrick
James Newton

Edward Spannaus - School of Social Work - 2nd yr.
Richard Sober General Studies Special
John Senese Graduate Faculties 1st Year
Michael McCann GF 3rd yr Chemistry
Robert Dillon Graduate Faculties 1st year
ROGER TAUS General Studies
Jim Newton College '70
Antony Papert College '67

Susan Kaplan 666-2802
Paul Rockwell 568-5095
Papert 663-6600
ext 606
Livingston

Berger
Aaron Warner
Dean Truman - Columbia
" Sullivan Grad
David Langsam - Columbia College
David Ment Teachers College

Harry ~~Stein~~ Steinhaver

Motions
re charges

Benson Bohrick ✓
B P " ✓
(not present withdrawn) → Pohl Corman Flanagan –
Rift Dillon ✓
R Fierayonti – Pardue –
not a student Gallagher ?
Quenthal ✓
withdrawn Jfirma Grelman
Jacobs ✓
Kaplow ✓
withdrawn – x McCann ? ✓
Melzer ✓
Newton ✓
Pablst ✓
not present – withdrawn Schedlovsky – Goldman
Sobel ✓
withdrawn Spanyans ✓
* Steinhauer ✓
Taus ✓
Siuisi ✓

Prof. W.K. Jones for Univ.

1 – Truman
2 – Langdon
3 – [illegible] as a whole
4 – Plimpton – marley

Clark, Alexander
Dir of Universities

350-400 employers
15 or - zero interviews
Emp'r writes for a date or two
Does Columbia invite? No
✓ what is policy - 1st come, 1st serve

Any refusals
~~not~~ yes - ethics

Type of employ
recruiter - not allowed 3rd party
CIA

CIA came to him
Nov 15, 16 + 17 + 18 '66
Feb 7, 8, 9 + 10 '67

who ~~they~~ CIA look for kinds of students

Interviewing
10:30 AM ~~6:00~~ 4 in [illegible] [illegible]
✓ Rm 606 Dodge Hall

C/A Russell & Fowler

10.30 students left at 11:10
at 11:10 - made it impossible
Jean Hypes order to
be allowed into rm

time?

Saw Mrs Hypes
Cap'n DeAlisseo - tried
to assist her - not allowed
into rm

Didn't count students

Further efforts to enter
rm - Student at 11:10
not allowed
door physically
blocked

Students not particularly
noisy

At 11:30 - same

Friedman
?
1:30 - "
2:00 "
3:10 "
3:30 "

other officials - Colum
for most of time

Spoke with students
Dean Alexander
DeKoff
asked to leave

Refusing to identify
themselves
Dean Walton -

Dean Alexander recognized me
(Report) to report to his office
other gov't

Nat'l Security
Bureau of Budget
Atomic Energy
Dept of Defense
HEW
Peace Corp
Vista
O.E.O.

Economic Research
History
in Washington
Area knowledge

Work oriented

Military & Economic Research
Russian area studies
Chinese area studies

Current Intelligence

CIA is a recruiting office

Would not have cancelled

If he had ethical doubts —
he would have considered them

---

witness
pictures Jan

#43 #21
#42
#41
#40
#39
#36
#26
#22

Feb 21 – cont'd

Steinhauer absent

Proctor Kahn

at 9:10 AM in N.P. office

woman seeking employment

went to personnel office to meet DeNisco — to go to Dodge when picketing was to take place

About 20–25 pickets — peaceful picketing

10:40 Dillon said going upstairs to check door

about 12 people went with him

He called DeNisco

Picket boss sat down in confined group preventing anyone going in

He was there until 12:15 — he left

Ret'd about 1:45 – 2:00 PM

Rem'd there until 3:30

Flanagan   Cowman — did not see him

✓ testified

Columbia cont'd

Feb 23

picture # $\frac{18}{25}$

(G) #36 within 1 hr of time it began

(H) #22

(A) #43 in morning - 1 hr. afte

(C) #41 " " " "

All morning
42 " " " "
21
40 " " " "

(E) 39 " " " "

J $\overset{25}{18}$ afternoon 1-3

Dean Alexander
Ass Dean for Student affairs
Original disciplinary

In office — knew of demonstration
had been alerted to possibility

To represent University
Got a call from Dean Truman
Students sitting in
about 11:45 am
went to Dodge Hall
DeKoff

Seated on floor
I addressed them —
asked them to disperse —

So that people who use office could have access but

Contrary to good procedure.
Thus exceeded limits of freedom
Access to door

Asked them to identify themselves
Physical coercion

to settle differences
SS the University must
rest on consent

2 ladies in the group

Told them of risk of disciplining for a group of men of group & failing to identify

Identified Rapert - asked him to come to office

DeKoff identified oriental

Dillon - spoke for group understood they were acting on conscience & principle of - understood possibility of discipline

There about 15 minutes

Tried to go thru - Clark asked for help to go thru.

Later

Group came, Rapert said all wanted to see him (C said he wanted to see Rapert alone of paper

gave him piece of paper

paper of mutual responsibility

Sister came later

Melzer

Introduced

University "Y"

M Columbia Student Handbook

$75

Kirk letter 1 7/8/65

N Kirk letter

O Published in Spectator

Letter written by him
after discussion - sent copies

Handbook disciplinary

Dean DeKiff

Inquiry DeKoff
accompanied Dean
Alexander

15-20 students -
Dean A talked with
students

made students fully
aware of consequences

interfering with a Uni-
versity function

subjecting themselves
to possibly severe discipline

Shame Heist some one
Signed Shapiro to be looking
for another institution
recognized Orientalist

Orientalist asked

Jo [illegible] —

Came in later with letter

Dillon said they thought carefully about what they were doing

Proctor Radin

act as a buffer between students & administration

to meet with students to arrange rallies & other student activities

University-P —

13 sitting on floor in about 3 rows

no blockage of corridor

Sec'y to in Placement

Ward had some forms

to take in

to get through

had to step over people

get to light saw

reaching for door

grabbed by the legs

he backed out

Doesn't recall whether

Cap'n said anything

when he arrived

Blocking door

enough room — make

crowd through so that people

Refused to move

Refused to identify

or Give I D cards

any other efforts

~~Impression~~
~~that they~~
wouldn't
let them
out How
does he
know

He had called several calls

to V.P. — no one could get

in or out

who tried to get

"

Clark talking to Dillon
no more interviews this day

"You know you can trust me
if I say there will be no more
interviews by the CIA today, there
won't be any more interviews"

1. Relations with students

2 time we were to enter not there

3 who tried to enter

4. DeNisco

5. [illegible] dug out

Write up agreement

Spoke to V.P. Dean
Trueman in office at time

left about 12:15

~~Points to cover~~
~~1. [illegible] students~~

DeNisco

This testimony will count!!

2/8 arrived about
10:45 remained there
except for tel calls —
men's room eat

attempt to enter with
Miss Ayres
had business to conduct — I have information

he told students that
she [illegible]

he stepped between
door - [illegible] over
he fell to the left -
dead, I fell to the ground.
the other [illegible]
for all [illegible] take
a student in front
group - at least
twice
One person went in -
bearded student.

He Said "It's Locked"

~~Did he lose~~
~~balance~~ How does he
know ~~that~~ someone
grabbed him.

Not On Picture

why
wasn't

BIA DAILY SPEC
FOUNDED 1877

NEW YORK, N.Y., MONDAY, JANUARY 9, 1967

CIA to Continue Career Interviews In Spring Term

By Dave Heim

The Central Intelligence Agency will return to campus in February to conduct employment interviews, and will face renewed protest by Students for a Democratic Society.

An official of the CIA will be on campus Feb. 7 to 10 to interview students, according to Alexander Clark, director of the Office of Placement and Career Planning.

Mr. Clark stated Friday that "in view of the situation since the original affair and President Kirk's remarks, we are going ahead as is."

"I daresay we will demonstrate," John Fuerst '67, leader of the student activist group, asserted Friday. "We will try to speak to the recruiter as we did last time," he continued. Fuerst also said that SDS had not decided what form their protest would take.

This November, when the CIA held similar job interviews, an SDS demonstration led to the first direct confrontation between President Grayson Kirk and student protestors.

One hundred fifty students marched on Dodge Hall Nov. 15 to "ask a few questions" of the recruiter. Later, it was announced that the government official would not return to campus.

The following Monday, President Kirk told a crowd of five hundred students that "the University does not undertake to make any value judgment" on organizations which "offer our students job opportunities."

[Columbia Daily Spectator]

SPECTATOR

77

, DECEMBER 2, 1966 FIVE CENTS

Dean Backs Policy On CIA Recruiting

David B. Truman

Sees Necessity to Shun Involvement in Politics

By Alan S. Lake

Dean David B. Truman strongly supported yesterday the University's policy of allowing the Central Intelligence Agency to recruit on the Columbia campus.

He said that the underlying issue in the recent demonstration against the CIA's presence on campus was an attempt to engage in the political controversy surrounding the agency and make Columbia a part of it.

"There is a world of difference between the university as an arena in which individuals can freely express themselves, and the institution taking a position in a political controversy," the Dean stated.

Dean Truman maintained that one of the conditions under which the university is able to act as a center for social innovation is that it "not become an instrument of political action—a tool in the political arena.

"If that occurs, the university becomes like any other group in the political market place," the Dean declared. "If that were to occur, it would constitute a loss not only to the university, but also to society."

He said that universities in the United States have found themselves in the role of social innovators much more in recent years than in the early history of the country. "This role as an innovator is important to society, but in a sense it could be said that it is one which we are permitted by society to perform."

Dean Truman stated that he "would associate himself completely" with President Grayson Kirk's statement last week on his decision to allow the CIA to recruit at Columbia.

While he termed last week's confrontation between President Kirk and five hundred students "a very good idea," Dean Truman stated that he was disturbed by the discourtesy shown by some of the students. He said that he did not object to their disagreeing with President Kirk, but added that students should have treated him with respect.

Trustees Show Variety of Ages, Jobs

Students are setting up informal contacts with the Trustees of the College. As an aid to communication both a composite picture and individual sketches of the Trustees appear below.

All Barnard trustees are U.S. citizens. All, save one, are college graduates.

Most Barnard trustees are New York residents, most are married.

The average age of the trustees is 54. The oldest is 84 and the youngest 40.

FRANCIS T. R. PLIMPTON, Vice-Chairman: Amherst graduate . . . director, New York Philharmonic Society, America-Italy Society, Morningside Heights, Inc., Practising Law Institute . . . president of board, Philips Exeter Academy . . . United States Trust Co. of New York, Bowery Savings Bank, Teachers Insurance Annuity Association, College Retirement Equities Fund, Amherst College, Union Theological Seminary, Athens College (Greece), Linghan University (China), Greater New York Fund . . . partner, Debevoise, Plimpton & McLean law firm. Dir Bd of Foundation for Youth + Social Affairs

Coop. with CIA

NY Times 2/67

SAMUEL R. MILBANK, Chairman: Princeton graduate . . . director, Francisco Sugar Co., Manato Sugar Co., New York and Honduras Rosario Mining Co., Slick Airways, Inc., Pine Street Fund, Inc., . . . Chairman Council Eye Bank for Sight Restoration . . . College Retirement Equities Fund, Community Service Society of New York; partner, Wood, Struthers & Co., Investment Bankers.

MRS. WILLIAM T. GOSSETT: Barnard graduate . . . director, Kingswood School (Detroit), Seven College Committee, Merrill Palmer School (Detroit) . . . Mr. Gossett is Vice-President and General Counsel for the Ford Motor Company.

MRS. IOLA S. HAVERSTICK: Barnard Graduate . . . former reporter, "Life Magazine" and secretary to the Yale Editorial Committee for **The Papers of Samuel Boswell** . . . freelance writer . . . editor of **The Wreck of the Whaleship Essex** by Owen Chase.

ROBERT L. HOGUET, JR.: Harvard graduate . . . director, Consumer Power Company, Catholic Youth Organization . . . vice - president First National City Bank of New York . . . board of managers, Hospital for Special Surgery.

ROBERT S. HUTCHINS: University of California graduate . . . Beaux Arts Institute of Design . . . St. Timothy's School . . . architect, Moore & Hutchins.

MRS. SYDNEY SPIVACK: Barnard graduate . . . trustee, Foxcroft School . . . director, Professional Children's School, United States and Foreign Securities Corp. . . . Mr. Spivack is with the Roger Williams Strauss Council on Human Relations of Princeton University.

MRS. ARTHUR H. SULZBERGER: Barnard Graduate . . . trustee, University of Chattanooga, Association of American Indian Affairs . . . Mr. Sulzberger is director and chairman of the board of **The New York Times** Company.

MRS. FREDERICK J. WOODBRIDGE: Barnard graduate . . . headmistress of the Nightingale-Bamford School . . . Mr. Woodbridge is a consulting architect with Columbia University.

In addition four alumnae trustees are members of the board: Mrs. Bruno V. Bitker, Mrs. Paul H. Flint, Mrs. Edward U. Pelz, and Mrs. John T. Sargeant.

MRS. BRUNO V. BITKER: former BULLETIN associate aditor . . . member, board of Visitors, University of Wisconsin, Milwaukee Association of Phi Beta Kappa . . . founder, friends of Wisconsin Libraries . . . Mr. Bitker is chairman of the Governor's committee on the United Nations and the Wisconsin Advisory Commttee to the U.S. Commission on Civil Rights.

VIETNAM NEWS SERVICE

Of The National Coordinating Committee To End The War In Vietnam
NCCEWV - P.O. Box 463 - Cathedral Station - New York, N.Y. 10025

BULLETIN No. 2

15 Feb. 1967

REPRODUCTION AUTHORIZED

UNIVERSITY COLLABORATION With The WARFARE STATE

By Michael Klare

JOHN A. HANNAH, head of Michigan State University, told a parents' convocation in 1961 that "our colleges and universities must be regarded as bastions of our defense, as essential to the preservation of our country and our way of life as supersonic bombers, nuclear-powered submarines, and intercontinental ballistic missiles."

Hannah's statement recognizes that social systems seek to use educational institutions for self-preservation. The U.S. is no exception; American universities have consciously adopted the anti communist doctrines of Cold-War society. Hannah's remarks can also be understood more concretely. Since World War II, U.S. universities have participated directly in development of the nation's military programs.

Michigan State University is a case in point. From 1954 to 1962, the MSU Vietnam Project was a lifeline of U.S. material and technical support to the regime of Ngo Dinh Diem. In its role as an official university project, under contract to the Saigon and Washington governments, the Michigan State University Group (MSUG) in Vietnam had responsibility for "the proper functioning of Diem's civil service and his police network, the shaping up of the 50,000-man 'ragamuffin' militia, and the supplying of guns and ammunition for the city police, the civil guard, the palace police, and the dreaded Sureté—South Vietnam's version of the FBI." (Warren Hinckle, Ramparts, April, 1966). During this period, at least five members of the MSUG were agents of the Central Intelligence Agency, using their academic position as a "cover" for intelligence work.

MICHIGAN STATE is not the only university implicated in America's Vietnam venture. The University of Pennsylvania, through its Institute for Cooperative Research, has been conducting research for the Defense Department on adaptation of chemical and biological weapons for use in Vietnam.

MSU's and Penn's involvement in Vietnam represents a failure of educators to question the uses to which scholarship is being put. Although these universities have gained considerable notoriety for their Vietnam projects they are not unique. The university in general is losing its identity as an independent center for the free pursuit of knowledge and is more and more becoming, in Hannah's words, "an effective instrument of national policy."

The university's rapprochement with the nation's military establishment began in World War II, when the government turned to the university to develop new weapons. The atom bomb, radar devices and many other innovations of that war originated in campus laboratories.

In the nuclear age that followed, the government continued to draw upon university scientists for development of modern weapons. Government programs in atomic energy and space exploration also created a tremendous demand for research facilities.

AS FEDERAL MONEY became available, many universities set up autonomous, semi-secret research institutions. In these centers scientists have participated in development of thermonuclear weapons and guided missile systems.

Research of this kind is usually performed at the larger universities, which can maintain large establishments. Examples are the Lawrence Radiation Laboratory at the University of California at Berkeley (atomic energy research); the Argonne National Laboratory of the University of Chicago (atomic energy), the Jet Propulsion Laboratory of California Institute of Technology, Lincoln Laboratory of the Massachusetts Institute of Technology (radar defense systems), the Electronic Research Laboratory of Columbia University (radar missile-tracking), and the Ballistic Missile Radiation Analysis Center of the University of Michigan. By 1964, the federal government was spending in excess of $1½ billion for university-conducted research (Report of the Committee on Government Operations, 89th Congress, 1st Session, Oct. 13, 1965). Funds supplied to the major universities are increasing. In 1965, MIT was the tenth highest defense contractor in the U.S., doing $119,544,000 worth of research for the Defense Department. In that year Johns Hopkins University received $43,497,000 from the Defense Department, the Stanford Research Institute received $25,588,000, and Columbia University $15,835,000. (Office of the Secretary of Defense, **500 Contractors Listed According to Net Value of Prime Contract Awards for Research, Development, Test and Evaluation Work**).

Figures for the fiscal year 1966, from the same source, showed: Johns Hopkins, $50,394,000; MIT, $47,308,000; Stanford Research Institute, $30,693,000; University of Michigan, $19,492,000; Stanford, $18,569,000; and Columbia, $16,203,000.

GOVERNMENT FINANCING of university-performed research has had a considerable impact. Many universities have become dependent upon federal funds for maintenance and expansion. In 1960 83.5% of Cal Tech's budget was supplied by government funds. For MIT this support was 81.1%, for Princeton 75.3%, for the University of Chicago, 63.8% (Seymour Melman, **Our Depleted Society**).

John W. Gardner, Secretary of Health, Education and Welfare, told the Consultants of the National Institutes of Health on Aug. 23: "The rapid expansion of federal support for research has created a mutual dependency among the federal government, the universities, and the scientists of the nation."

The university-government dependency has not occurred, according to Melman, "without a serious rearrangement of the university structure in the United States as a whole." In hearings last year on "Conflicts Between the Federal Research Programs and the Nation's Goals for Higher Education," the House Committee on Government Operations reported: "Federal research and development pro-

con'd

Note: This article appeared originally in the February 4, 1967 issue of the National Guardian.

DOCUMENTATION:

University Involvement in CBW Research:......... p.4
Pentagon-Financed Campus Research, 1966 Figures: p.2

MILITARY RESEARCH ON CAMPUS:

American Universities Among the 500 Contractors Listed According to Net Value of Military Prime Contract Awards for Research, Development, Test and Evaluation Work, Department of Defense—FISCAL YEAR 1966

University:	*Value of Contracts:*
Johns Hopkins University	$50,394,000
Massachusetts Institute of Technology	47,308,000
Stanford Research Institute	30,693,000
University of Michigan	19,492,000
Stanford University	18,569,000
Columbia University	16,203,000
University of California	16,149,000
Cornell Aeronautical Laboratory	14,961,000
Illinois Inst. of Technology Research Institute	13,952,000
Pennsylvania State University	11,830,000
University of Illinois	10,875,000
Franklin Institute of Pennsylvania	9,117,000
University of Washington	6,434,000
University of Pennsylvania	5,932,000
Cornell University	5,452,000
Syracuse University Research Corp.	5,343,000
George Washington University	5,229,000
University of Denver	5,074,000
Harvard University	4,286,000
University of Texas	4,073,000
New York University	3,929,000
University of Dayton	3,670,000
California Institute of Technology	3,584,000
Princeton University	3,568,000
University of Chicago	3,444,000
Ohio State Univ. Research Foundation	3,416,000
Brown University	3,011,000
Northwestern University	2,742,000
Duke University	2,631,000
American University	2,594,000
Brooklyn Polytechnic Institute	2,468,000
University of Maryland	2,314,000
University of Miami	2,139,000
Carnegie Institute of Technology	2,077,000
University of Minnesota	2,061,000
University of Wisconsin	1,928,000
Northeastern University	1,914,000
University of Pittsburgh	1,780,000
New Mexico State University	1,663,000
Purdue Research Foundation	1,629,000
University of Alaska	1,598,000
Research Triangle Institute	1,519,000
Texas A&M Research Foundation	1,397,000
University of Utah	1,367,000
Illinois Institute of Technology	1,305,000
Stevens Institute of Technology	1,271,000
Georgia Tech Research Institute	1,269,000
University of Colorado	1,264,000
Washington University	1,194,000
University of New Mexico	1,143,000
Syracuse University	1,119,000
University of Cincinnati	1,109,000
University of Southern California	1,058,000
University of Rochester	1,056,000
Purdue University	1,046,000
University of North Carolina	954,000
University of Arizona	950,000

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Federal Funds for Research, Development, and Other Scientific Activities—Fiscal Years 1964, 1965 *and* 1966—*Volume XIV*, Prepared by the National Science Foundation and available from the Atomic Energy Commission, Washington, D.C. 20545, as well as from the GPO.

Public Health Service Grants and Awards (1965), Part I: Research. Public Health Service Pub. No. 1346, Part I. $1.75. Lists Public Health Service grants by university and individual researcher, with title of project.

Directory of Department of Defense Information Analysis Centers. Office of Naval Research, Dept. of the Navy. Cat. ONR-23. 15 cents. Lists university research centers, with description of work.

Army Research Task Summary, Volume I, Life Sciences and Psychological and Social Sciences. Fiscal year 1961. Office of the Chief of Research and Development, U.S. Army, Department of the Army, GPO.

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Available from the National Aeronautics and Space Administration:

Grants and Research Contracts, Office of Grants and Research Contracts, National Aeronautics and Space Administration, Washington D.C. 2-546. July 1, 1966.

Available from the Atomic Energy Commission:

Lists of AEC contracts with educational institutions engaged in research and development work are available on request. They list institution and value of contracts.

Available from the Committee on Government Operations:

Conflicts Between the Federal Research Programs and the Nation's Goals for Higher Education, Committee on Government Operations, 89th Congress, 1st Session. House of Representatives, Wash. D.C., GPO. June 1965 Hearings: June 14, 15, and 17, 1965. Report: October 13, 1965.

grams have harmed scientific higher education by . . . overemphasizing research to the detriment of teaching . . . [and] by concentrating such programs in such a way that is detrimental to science education in smaller institutions." The committee's report also noted that "federal research and development programs . . . have necessarily neglected the social sciences and humanities."

NOT ONLY HAVE such imbalances of emphasis in higher education occurred, but the purposes of the university have been altered. American universities were once centers of pure scientific research: R. E. Marshak, physics professor at the University of Rochester, has argued that "the objectives of the basic research enterprise are furthered by allowing the individual scientist complete freedom both to choose the subject matter of his investigations and to draw the conclusions to which they lead . ." (Science, Dec. 23, 1966). But the government is interested in "goal-oriented" or applied research leading to development of weapons or technological advances. Considering that by 1965 "about 90% of the federal government's outlays for research and development lay in the military and related fields" (Melman), it is no wonder that many scientists believe that free scientific inquiry is jeopardized. Melman concludes:

"National dependence of this sort inevitably carries with it a degree of decision-power over what is done at universities which, however restrained, is nevertheless an inroad on the university's liberty to pursue freely the development of useful knowledge and to make it available for the use of mankind . . . The presence of vast federal research programs constitutes a set of decisions over what is important, based upon particular political - military policies rather than the investigator's own choices about what will advance knowledge."

Perhaps the most vivid evidence of the university's subservience to governmental "political-military policies" is the report that 33 American universities are conducting Pentagon-financed research on chemical and biological warfare (CBW).

UNIVERSITY INVOLVEMENT in CBW research has become a national issue since the disclosure last spring that the University of Pennsylvania was developing such weapons for use in Vietnam. Since then, information on CBW research at other campuses has come to light. The New York University student newspaper reported last Nov. 17 that for the last four years NYU's School of Engineering had been conducting Army-financed research on "Statistical and Mathematical Evaluation of Chemical Warfare Weapons Systems." At the University of Connecticut the campus newspaper reported Nov. 7, 1966, that the university's department of pharmacy was doing research on the synthetic production of LSD and other drugs as part of an Army program to determine the effect of psychedelic drugs in chemical warfare.

The behavioral science and political science departments of universities have been implicated in federal programs. In 1965 the Defense Department spent $20 million on research in the behavorial sciences, much of it for research on foreign nations. Information on university participation in the overseas intelligence operations came to light last year with the controversy surrounding Project Camelot, an Army project to "produce a better understanding of the dynamics of revolutions in foreign countries." (Science, Sept. 10, 1965). Research projects were scheduled in several Latin American countries, but were canceled after the first country on the list, Chile, charged that the project intruded into Chilean affairs.

At the University of Pennsylvania the Foreign Policy Research Institute was engaged in intelligence work for the Defense Department. FPRI is now working on a classified study for the Navy on "The Nature of Sublimited Warfare" (guerrilla war). At MIT the CIA has been funding an operation known as the Center of International Studies since 1951. MIT was forced to discontinue a CIS project in India because of anxiety there over the center's CIA connections.

THE CONTROVERSY surrounding the MSU Vietnam Group and the Camelot Projects caused the American Anthropological Association to investigate the role of government agencies sponsoring overseas research. At the anthropologists' annual meeting last November Prof. Ralph L. Beals reported that, 1) "Agents of the intelligence branches of the U.S. government, particularly the CIA, have posed as anthropologists . . ." 2) "Anthropologists . . . have been full- or part-time employes of the U.S. intelligence agencies, including the CIA especially, either directly, or through grants from certain foundations with questionable sources of income . . ." Beals warned his colleagues that "although Camelot is dead under that name, in a sense it has only gone underground. Similar types of projects have been conducted and are being planned under different names and through other kinds of agencies." (Quoted in Science, Dec. 23, 1966.)

In the last two decades there has been increasing subjugation of higher education in this country to the needs of the military establishment. Stanley Sheinbaum, an editor of Ramparts magazine and one-time coördinator of the MSU Vietnam Project, described the resulting corruption of university life:

"The struggle for status, recognition and money is an irresistible lure; the glamorous project is grabbed and sometimes even invented. Within the university only the exceptional faculty member seeks reward and promotions via scholarship and teaching. The easier and even the more prestigious route, is that of the new-breed professor with his machine-stamped Ph.D. who orbits in the university's stratosphere of institutes, projects and contracts. The student is lowest among his priorities. The work he emphasizes is of dubious value—by reason of his bias against considerations of value."

CBW INFORMATION...

In the past few months, chemical and biological warfare (CBW) research has become a major issue in the American academic and scientific communities. In order to assist local groups investigating CBW work at their own universities, and to provide a national focus for such efforts, several organizations have formed a clearinghouse for information on CBW campus research. Sponsors of this project include VIET-REPORT magazine, VIETNAM NEWS SERVICE, the N.Y. Committee for a SANE Nuclear Policy, and many scientists.

Through the combined efforts of these groups, a 'study guide' has been prepared which outlines the steps to be taken in a campus investigation of CBW research. For copies write: Committee for Academic Integrity, c/o N.Y. SANE, 124 E. 40th Street, N.Y. N.Y. 10017. The guide will also appear in the January/February issue of VIET-REPORT.

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No. 21; 15 Feb. 1967

A project of the
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the War in Vietnam

NCCEWV, P. O. Box 463
Cathedral Sta., N.Y., N.Y. 10025

Project Director:
Michael Klare

CBW on CAMPUS

THE UNIVERSITIES ENGAGED IN CHEMICAL-BIOLOGICAL WARFARE RESEARCH*

University of Alabama
Associated Universities, Inc.**
University of Buffalo
Univ. of Calif., Berkeley
Univ. of Calif., Los Angeles
University of Chicago
Columbia University
University of Connecticut
Cornell University
Fordham University
University of Hawaii
University of Illinois
Illinois Inst. of Technology
Johns Hopkins University
University of Kansas
Kansas State University
University of Maryland
University of Massachusetts
University of Michigan
University of Minnesota
University of Nebraska
University of New Mexico
New York University
State Univ. of New York
  Research Foundation
Notre Dame University
Ohio State University
  Research Foundation
University of Pennsylvania
Research Triangle Institute***
University of Texas
Texas Medical School
University of Utah
Utah State University
William and Mary College
University of Wisconsin
Yale University

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*As identified by James K. Batten, Knight Newspapers, Inc., in Charlotte (N.C.) Observer, Aug. 8, 1966.

**Columbia, Cornell, Harvard, Johns Hopkins, Mass. Inst. of Technology, Princeton, Univ. of Pennsylvania, Univ. of Rochester, Yale.

***North Carolina State and Durham University.

For confirmation of CBW activities, and further details, see VIET-REPORT, June/July 1966 (Univ. of Pennsylvania); SUNDAY RAMPARTS, Feb. 12, 1967 (Univ. of California at Berkeley); BACTERIOLOGICAL REVIEW, Sept. 1966 (Ohio State); WASHINGTON SQUARE JOURNAL, 17 Nov. 1966 (New York University); The CONNECTICUT DAILY CAMPUS, 7 Nov. 1966 (Univ. of Connecticut); "500 Contractors Listed According to Net Value of Military Prime Contracts...," Fiscal Year 1966 (University of Utah).

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CIA Chief Facing Senate Panel

By RALPH BLUMENFELD

CIA director Richard Helms goes before a Senate "watchdog" subcommittee today armed with a pat on the back from one of the Senate's severest critics of the CIA's business deals.

Senate Majority Leader Mansfield, who cried "Big Brotherism" after the CIA's financing of student groups was exposed last week, lauded Helms as "the best administrator the agency has ever had" and predicted that the CIA will survive its current "period of discomfiture."

The uproar must not be permitted to disrupt the CIA's spying mission, said Mansfield, who was added to the watchdog subcommittee headed by Sen. Russell (D-Ga.) only six weeks ago along with Sen. Fulbright (D-Ark.) and Sen. Hickenlooper (R-Iowa).

"There is a vital need for this intelligence activity and it must be protected," Mansfield said. "I think there is developing a better understanding of its mission which will bring a better functioning CIA with more effective administration."

Amid a continuing uproar on college campuses across the nation, Mansfield praised President Johnson's order ending CIA subsidies to student groups as "wise."

He said the State Dept. and the Health, Education and Welfare Dept. have enough funds to send students to conferences abroad, supplanting the CIA's backing on an "open and above-board basis."

"Certainly we want American students to attend these conferences and not permit the Communists to dominate them," Mansfield said.

Meanwhile, Sen. Young (R-N. D.) announced that the CIA had had the "full authority" of the President, the National Security Council and the Bureau of the Budget in channeling funds to student groups. And Sen. Stennis (D-Miss.) warned that unnamed groups

consin again criticized the "secrecy" of the CIA-student link, but added "If the money is needed, and perhaps it is, then let's give it openly."

At Columbia yesterday, 200 jeering students chanted "the CIA must go!" during a disciplinary hearing for 16 student sit-ins who protested CIA recruiting on campus Feb. 8.

After the closed-door hearing the students' lawyer, Carl Rachlin, quoted Columbia placement director Alexander Clark as saying he would still permit CIA recruiting "knowing what he knows about the CIA today." Rachlin said, "If that is the university's position, then the moral issue is very clear."

The New York Newspaper Guild last night joined the American Newspaper Guild and its statewide council in endorsing the union's international seminars program and the use of foundation funds to support it. The ANG has denied knowingly accepting more than $1,000,000 in CIA funds channeled through foundations.

Norman Thomas, the Socialist elder statesman who once headed the now-defunct Institute for Labor Research, said he was unaware that a $1,000,000 grant to the ILR by the J. M. Kaplan Fund in 1963-64 had originated with the CIA, as reported in Washington.

"I acknowledge my own stupidity," Thomas said. "It was

Who Was There?

Associated Press Photo

The excerpts from William Manchester's "The Death of a President" in Look magazine said assassination-day photos of President Johnson's swearing in "did not record the presence of a single male Kennedy aide." In this picture, one of a series published by Time magazine yesterday, two male Kennedy aides are identified; Malcolm Kilduff (first l) and Gen. Chester V. Clifton, military aide (uniform). Time says its photos show at least five Kennedy men there.

Joan Baez Misquoted— Another Caper by CIA?

[Columbia Daily Spectator, March 16, 1967]

Student Is Suspended For Anti-CIA Protest

College Demonstrators Put on Probation; Others Receive Letters of Censure

By Michael Rothfeld

One student has been suspended from the University for a year for taking part in a sit-in to protest recruiting by the Central Intelligence Agency last February, it was learned yesterday.

In addition, several students who took part in the demonstration have received letters of censure or admonition and about nine students have been placed on disciplinary probation beginning next fall.

George Gruenthal '68, the suspended student, said yesterday that his suspension takes effect next September.

Most of the protestors registered in the Graduate Faculties received letters of censure. The College students, with the exception of Gruenthal, received letters placing them on disciplinary probation. One College freshman received a letter of admonition.

A student from the School of Social Work was placed on disciplinary probation. A Barnard student received a letter of censure and warning.

A source close to the panel which conducted hearings on the protestors stated last night that the panel had recommended that Gruenthal be suspended from the University for one year with the option of immediately applying for readmission. This would, in effect, negate the suspension. President Kirk, however, decided not to follow the panel's recommendation.

The official report of the hearings panel and a formal statement by President Kirk will be released by the University today.

A letter of censure is a step between suspension and disciplinary probation. It implies that if the student commits other rule infractions, he is subject to severe penalties by the administration.

The executive committee of the Columbia University Student Council announced last night that it "condemns the suspension of George Gruenthal."

"We feel that this punishment will be taken as an attack on the right of students to express their political views. By kicking Gruenthal off campus, and allowing the CIA to recruit, the University places the rights of an off campus government organization as greater than the rights of a student," the committee added.

In addition, the committee pointed out that "a suspension at this time places a student in danger

(Continued on Page 2)

CIA Protestor Is Suspended Despite Panel's Leniency Plea

(Continued from Page 1)

with the draft. The University cannot, in good conscience, subject a student to this form of double jeopardy."

The steering committee of Students for a Democratic Society stated last night that although President Kirk generally followed the panel's recommendations, he "saw fit to ignore the panel's recommendations that the suspended student be allowed to reapply for admission in September before his one-year sentence would have begun."

The students who sat in did us a service by keeping the CIA off the campus and by keeping us aware of the threat to our University," the statement read. "Letters of censure, not to speak of suspensions, are not in order. The students who sat in should be commended, not condemned."

Feb?

C.I.A. RECRUITING SUPPORTED HERE

Columbia Official Approves of On-Campus Policy

A Columbia University official asserted yesterday that he saw nothing "ethically wrong" in allowing the Central Intelligence Agency to recruit on campus.

Alexander Clark, the director of Columbia's office of university placements and career planning, made his statement in testimony offered before an advisory committee. The committee began conducting hearings yesterday on the case of 19 students accused of sitting-in outside the office where two C.I.A. recruiters were conducting interviews on Feb. 8.

The findings of the committee, composed of two administrators, two faculty members and two students, will be passed on to Dr. Grayson Kirk, president of the university. He will make final disposition of the matter. The hearings are scheduled to continue today.

Would Permit Recruiting

Asked whether he would permit the C.I.A. to resume its on-campus recruiting, in view of the adverse publicity the organization has received recently, Mr. Clarke repiled unhesitatingly "Yes."

Representing the university at the hearings is William K. Jones, a profesor of law at Columbia Law School. The chief counsel for the accused students was Carl Rachlin, the legal director of the Scholarship, Education and Defense Fund for Racial Equality, Inc. Neither men are accepting fees for their services.

Format Is Challenged

Mr. Rachlin opened his defense by attacking the basic format of the hearing. After observing that Columbia was the complaining party, he stated that "it's not quite proper for the university to select the hearing officers," suggesting that the school either withdraw its charges or submit the case to outside arbitration.

Mr. Rachlin also questioned the impartiality of one of the panel members, Dr. David B. Truman, the dean of Columbia College, charging that he had "prejudged the right of the C.I.A. to appear on this campus."

The committee rejected the claims that it had no right to conduct hearings asserting that it had been duly authorized to function by President Kirk. The committee chairman, Curtis J. Berger, also a professor at Columbia Law School, allowed Dean Truman to rule on his own eligibility, and the dean stated that he saw no need to disqualify himself.

COLUMBIA DAILY SPECTATOR February 23, 1967

The Hearings

By Robert Friedman

Amidst all the speculation over the outcome of the hearings being held for the nineteen student anti-CIA demonstrators, few people have questioned exactly why hearing procedures were chosen to deal with the case.

The word "hearings" brings to mind procedings indigenous to the legislative and judicial branches of government and not to the academic world. It does seem odd that President Kirk would have chosen this method. But, there are several reasons which may have motivated him to do so.

AUTHORITY

A final decision as to whether the students will be expelled or not is up to the President. Had he alone made the decision to expell the demonstrators, his action would have appeared to be a full, and to some an unjust, exertion of authoritative power.

However, had he declared that the students could remain in the University he would have made the administrators who threatened expulsion look foolish. Once the threats were made, the University either had to follow through, or in some way make it apparent that they do not toss about meaningless warnings.

FACE

Thus, the hearings were called for largely to save face. Judicial or quasi-judicial procedings, as the hearings may best be termed, have at least a presumption of fairness whatever the outcome may be. The more judicial and formalized these hearings are, the fairer the verdict may seem.

The face saving works two ways. If the students are finally expelled, placed on probation, or severely censured, the University administration could not be accused of an arbitrary use of power because it would be acting on the recommendations of a tripartite panel hearing the cases. Since the panel is composed of administrators, faculty, and students, its decision would seem fairer -- more representative of the sentiment of the whole University. Certainly the presumption of justice being done is not accepted by all; student disapproval would have been far more common, however, had traditional procedures been employed.

If the verdict is mild, or the students are finally acquited, at least it could be said that the threats made by Associate Dean Alexander and Assistant Dean De Koff were not hollow. Instead, they led to the examination of these students before the tripartite panel, with the possibility of expulsion. The burden of implementing the warnings was thus removed from the deans and the administration and thrust into the hands of the panel.

It is conceivable that had the threats never been made the hearings would not have been necessary. The students could have been let off mildly without making anyone in the administration look foolish.

DEMANDS

For the first time President Kirk had a clear opportunity to appease students' demands for participation in deciding such cases.

Last year these student demands were formallized in the Student Life Committee's recommendations that a tri-partite panel be set up to handle such situations. The CIA demonstrations -- in their scope and severity lent themselves to the implementation of some of the committee's proposals.

The decisions of a tri-partite panel would appear to be just. They would also effectively remove the responsibility of verdict from the administration.

However, President Kirk's conception of what kind of panel would make the fairest decision seems to differ from that of SDS and the Student Life Committee, for he disregarded the committee's suggestions for a 5-4-3 distribution of students, faculty, and administrators, respectively, on the panel. Although this proposal was ignored, President Kirk by initiating these hearings has taken one step towards meeting demands for student participation.

REVERSAL

Despite all these attempts to arrive at a fair decision and save face, the administration seems to have sacrificed its upper hand and has been facing humiliation at the hearings. This is particularly noticeable in the questioning of Dean Bavid B. Truman's qualifications as a panel member, and the reversal of a prior administrative decision not to allow students into the sessions.

What began as a face saving gesture, then, is beginning to turn into a rout of administration forces. They are losing ground and are vulnerable to further setbacks if the hearings are drawn out for many more days. After this experiment, it is questionable whether the administration will be willing to accept such hearings again. Unless both sides can retain their dignity, hearings may soon be unheard of at Columbia.

Protestors Achieve Partial Victory

By Jeffrey Newman

A revolution can be a genuine harbinger of The New Order to come or it can be a dud that has been captured and betrayed in midstream. The revolution that emerged from the depths of Low Library yesterday was neither a harbinger nor a dud; it was both.

Unquestionably, the student CIA protestors left the hearings yesterday in better shape than they -- or anyone else -- expected. When approximately one hundred students demanded access to the hearing room, after all "certified" observers and participants had been seated, the ruling committee halted, fumbled, and finally yielded to their request. At the hands of their articulate defense counsel, a civil liberties lawyer named Carl Rachlin, Dean Truman was publicly attacked for allegedly pre-judging the issues at state.

News Analysis

And an administration representative, Alexander Clark of the Career Planning Office, was spared possible humiliation at the hands of the audience when the accused students chose to identify themselves voluntarily.

In fact, Columbia's very decision to hold hearings in a semi-public format, with quasi-judicial rules of procedure, represents a decided break with past procedure and a significant shift in the balance of the

(Continued on Page 10)

Curtis J. Berger

Carl Rachlin

SDS Petition defending those who sat in against the CIA

The Columbia administration has involved the university in complicity with criminal overseas activities of the United States government: university facilities are being used to train officers for naval warfare in Vietnam, to conduct secret military research, and to help select from among the students those who will be sent against their will to fight in Vietnam. This complicity was highlighted on February 8, when the administration offered university facilities and cooperation to aid in recruiting agents for the C.I.A., an organization engaged in criminally subversive activities throughout the world.

Numbers of Columbia students protested this decision, and about twenty conducted a non-violent sit-in demonstration before room 606 Dodge Hall. The agency and the administration decided to end c.i.a. recruitment at Columbia for the time being.

Those who sat in were opposing university complicity in crimes against humanity. They were morally justified in doing what was necessary to stop C.I.A. recruitment using university facilities for the day of February 8. Reprisals against them by the university would only re-emphasize the university's role as a middleman for the government. No such reprisals should be taken.

We also note and protest the fact that President Kirk has himself appointed four out of the six members of the present "hearing board," and will consider its decisions only advisory to himself. It would be a further affront to the Columbia students' sense of justice to hide from them whatever proceedings may be instituted against those who sat in. These proceedings should be open to all members of the university community.

Students Win Partial Victory But Administration Still Rules

(Continued from Page [illegible]

student-administration relationship.

Yet, for all the skirmishes the students have managed to win thus far, the main battles still lie ahead, and, not surprisingly, the administration appears to hold the upper hand.

For one thing, the committee was, in the end, able to maintain a relatively large degree of control over the proceedings by refusing to define precisely the rules and status of the hearings. In declining to accept a New York Times report as formal evidence, the committee claimed it was enforcing established legal procedure.

Yet, when pressed to explain how the University could both bring charges against the students and simultaneously name their case-judges, the committee took refuge in the assertion that it was not a court of law, but merely an advisory body duly constituted by President Kirk.

At the same time, while structuring the committee with a "balanced" representation of students, faculty, and administrators--each has two representatives-- the University has effectively ignored the recommendations submitted by the President's Committee on Student Life fully a year ago. That committee, which was charged with establishing procedures and ground rules for just such an occurance as is now under consideration, urged that hearing bodies be constituted with both students and faculty outnumbering administration representation on a 5-4-3 basis.

This is not to say that the tripartite committee is little more than a kangaroo court. It is, however, a warning to those who would prematurely applaud the changing of the old guard. And a verdict is yet to be rendered.

Lawyer Challenges Procedure of Trial

(Continued from Page 1)

cruit students. He noted that the University does not invite any organizations to recruit, but that the organizations themselves ask to be able to do so.

The only time any organization is turned down is in "a problem of ethics," he said. He indicated that this was not so in the case of the C.I.A.

Mr. Rachlin cross - examined Mr. Clark concerning the specifics of the events surrounding the sit-in on Feb. 8 in Dodge Hall, especially whether or not the door the protesters were blocking was locked.

COLUMBIA DAILY SPECTATOR
FOUNDED 1877

NEW YORK, N.Y., FEBRUARY 21, 1967 FIVE CENTS

Photo by Jerry Avorn

What may have been a revolutionary development in student-administration confrontations occurred yesterday as students gained the upper hand in a formal disciplinary hearing, causing visible disturbance and frustration among the administrators and faculty participating in the session.

The keynote for the hearing was set as the administration itself was forced to give in to demands of approximately one hundred students that they be allowed to observe the trial of the sixteen students who sat-in to protest recruiting by the Central Intelligence Agency Feb 8.

The session was intended to be closed to the public, although open to the student press.

Columbia officials were put further on the defensive as Carl Rachlin, principal attorney for the students on trial, questioned the propriety of the tri-partite panel established by President Grayson Kirk to hear the case.

Counsel Challenges Panel's Objectivity For Sit-In Hearing

Says Truman, Langsam Unsuitable as Jurors

By Oren Root

Carl Rachlin, the principal attorney for the nineteen students who sat-in to protest recruiting by the Central Intelligence Agency February 8, yesterday challenged the propriety of the University's both accusing the students and appointing the panel to try them.

The panel, composed of two members each from the administration, faculty, and student body, was appointed by President Grayson Kirk on Feb. 10 for the purpose of hearing the case of the nineteen protesters.

Mr. Rachlin, the legal director or the Scholarship, Education and Defense Fund for Racial Equality, brought up his objections to the tri-partite panel as part of his opening remarks at the first session of the hearings.

He also suggested that Dean David B. Truman and David Langsam '67, president of the Columbia University Student Council, withdraw from the committee because he doubted their objectivity.

Mr. Rachlin then asked. "W
is the University's interest in t
hearing?"

"Because of the Universit
own interest in this case w
the C.I.A., I do not think it
capable of a fair decision,"
stated.

Professor of Law Curtis
Berger, chairman of the commi
tee, said that the hearings wou
proceed as long as the panel h
its mandate from President Kirk

Alexander B. Clark, director
University Placement and Caree
Planning and the first witnes
called by the prosecution, sa
that he did not consider recruit
ing by the C.I.A. on campus t
be ethically wrong.

When asked by the defense coun
sel whether he would allow th
C.I.A. to recruit at Columbia
knowing what he knows now abou
that organizations secret suppor
of the National Student Association, Mr. Clark said he would.

Mr. Clark explained the process by which organizations re-

(Continued on Page 10)

MSS
546

SEDFRE

CONLEY, RICKEY, DALE et al. VS. LAKE CHARLES SCHOOL BOARD LOUISIANA 1965-

State Historical Society Of Wisconsin

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THE FOLLOWING PAGES ARE THE BEST
AVAILABLE.

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

LAKE CHARLES DIVISION

- - - - - - o o 0 o o - - - - - -

RICKEY DALE CONLEY AND LANA :
GAIL CONLEY, etc., ET AL :
:
VS. :
: CIVIL ACTION NO. 9981
LAKE CHARLES SCHOOL BOARD, etc. :
and :
CALCASIEU PARISH SCHOOL BOARD, :
etc. :

ORDER APPROVING PLAN OF DESEGREGATION

Proposed Plans No. II as submitted by the Calcasieu Parish and Lake Charles City School Boards[1] are hereby approved with the following amendments and modifications:

(1) The words "even though made on the basis of race" are deleted from Paragraph (1).

(2) "July 15, 1965" is deleted from Paragraphs 1(a) and 1(c), and in lieu thereof is inserted "August 1, 1965" in each instance.

(3) Paragraph 1(c) is further amended so that the public notice therein required shall consist of the publication of said notice for three (3) consecutive days beginning July 1, 1965.

(4) Paragraphs 1(d)(5) and 1(f) are deleted in their entirety.

(5) Paragraph 1(g) is amended by deleting the clause "* * * and appeal proceedings hereinabove outlined have been

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[1] Filed herewith and made a part hereof.

requested, and further relief is [illegible] by the applicant. [illegible]

Paragraph 3 is deleted and substituted in lieu thereof the following:

"In each succeeding school year this planned desegregation shall progress so that all grades shall be included by September 1968. Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan."[2]

The Court shall retain jurisdiction to make such other and further orders as it may deem necessary and just, and which changes of circumstances might require.

DONE AND ORDERED in Chambers at Lake Charles, Louisiana, on this the __________ day of __________________, 1965.

UNITED STATES DISTRICT JUDGE

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[2] Lockett v. Muscogee County School District, No. 21,662 (5 C.C.A.) decided February 24, 1965.

PLAN FOR INTEGRATING LAKE CHARLES CITY SCHOOLS

WHEREAS, the Lake Charles City School Board has been directed to present to the Court by March 3, 1965, a plan designated to bring about compliance with the Court order of February 3, 1965 which requires that the Board submit a plan for orderly desegregation of the Lake Charles City Schools, and

WHEREAS, the Lake Charles City public schools have in the past been organized and are, at the time of this resolution, organized into elementary school districts intended to provide for those students living in the immediate area. However, it has been necessary to make certain deviations because of the density in population, available land for the school site, the need to make maximum use of existing building facilities, and the attendant problems of a rapidly expanding community, and

WHEREAS, the school system has been organized into junior high school and senior high school districts based upon the designation of contributing elementary school districts, or parts of elementary school districts for junior high school and contributing junior high school districts, or parts of junior high school districts, for senior high schools, and

WHEREAS, the decision of parents to have their children change the school which they have been attending, pursuant to the order of the Honorable United States District Court that the school district be desegregated, will create a need for the staff and the schools involved to make changes in the assignment of building space, the organization of the school staff for instruction, and the distribution of instructional supplies, and

WHEREAS, pending further studies and recommendations by the school authorities, the Calcasieu Parish School Board considers that any general or arbitrary reallocation of pupils heretofore entered in the public school system according to any rigid rule of proximity of residence or in accordance solely with the requests on behalf of pupils would be disruptive to orderly administration and would tend to invite or induce disorganization and would impose excessive burdens on the available resources as well as teaching and administrative personnel of the schools, and

WHEREAS, the State Board of Education has not promulgated rules and regulations relative to placement of students in the schools, and this Board has the inherent power of pupil placement and more complete regulations are necessary.

NOW THEREFORE, to insure the continued orderly and efficient operation of the school system and to comply with the order of the Honorable United States District Court and to instruct the school staff as to how they shall handle the problems of desegregation and to insure orderly procedure of uniform application for pupil assignment, transfer, and/or placement, and to enable the continuing improvement of educational advantages offered, the following rules and procedures shall be followed:

1. All initial pupil assignments made for the school year 1965-66, even though made on the basis of race, will be considered adequate, subject however to the following transfer provisions:

   (a) The Lake Charles City School Board will, not later than July 1, 1965 mail notices to all students, regardless of race or color, presently assigned for the school year 1965-66 to the twelfth grade of any school under its jurisdiction, advising them that they may, from July 8, 1965 to July 15, 1965 apply for transfer and reassignment to the twelfth grade of another school of their choice.

(b) Such transfers will be made in accordance with the procedures pertaining to transfers currently in general use by the Lake Charles City School Board. Application forms for transfers will be made available, upon request, by the School Board to all students affected, and complete, detailed instructions as to procedures to be followed in applying for transfers will be furnished with the applications.

(c) The Lake Charles City School Board will, not later than July 1, 1965, cause to be published in the Lake Charles American Press, a notice to persons responsible for pupils eligible to enter the first grade, advising said persons that applications for assignment to the first grade of any school under its jurisdiction, may be made from July 8, 1965 to July 15, 1965.

(d) Transfers or assignments, when requested, shall not be unreasonably denied. No denial of a request for transfer or assignment shall be based on race or color. However, in determining whether or not a request for transfer or assignment shall be granted, the School Board, in considering the application for transfer or assignment, may consider the following factors as proper criteria to be applied in granting or denying the request for transfer or assignment:

(1) The desire or wishes of the pupil and his parents or guardian.

(2) Availability of space and other facilities in the school to which the transfer or assignment is requested.

(3) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested.

(4) The availability of requested or desired courses of study in the school to which the transfer is requested.

(5) The scholastic record, ability and antitude of the pupil as determined from his prior school record, and his compatibility or reasonably expected compatibility in this regard with the school to which transfer is requested. Additional standard

guardian in the preparation of the application for transfer or assignment.

(e) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment not later than August 10, 1965. If such notification is to the effect that the requested transfer or assignment has been denied, specific reasons for such denial shall be clearly set forth in the notification of rejection.

(f) If a requested transfer or assignment is denied and the applicant or his parents or guardian wish to make objection to the denial, such objection shall be filed in writing with the Superintendent of Schools, or his designated representative, not later than August 16, 1965. In such event, the party thus taking exception to the School Board's ruling may, if he wishes, request a conference with the Superintendent of Schools, or his designated representative, in order to more fully discuss the reasons for rejection. If such a conference is requested, it shall be granted, and all such conferences shall be made available from August 16, 1965 through August 20, 1965. In the absence of objections and/or requests for conferences being filed as herein provided, it will be conclusively presumed that the applicant has no objection to the action taken by the Board.

(g) When an applicant's request for transfer or assignment has been rejected, and appeal proceedings hereinabove outlined have been exhausted, and further relief is sought by the applicant, such further relief may then be sought through appropriate judicial proceedings.

2. Commencing with the school year 1966-67, all intital assignments of pupils to the first, second, tenth, eleventh and twelfth grades in all schools under the supervision and control of the Lake Charles City School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

3. In each succeeding school year this planned de-

segregation shall progress to include two additional grades down from the top so that within a total of six years all twelve grades will have been desegregated in accordance herewith. As the plan progresses, the right shall always be reserved to all students to apply for transfer in accordance with the procedures hereinabove set forth; and the right shall always be reserved to the School Board to place a pupil in a school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

4. The method of initial assignment herein provided for will, of course, be subject to all reasonable procedural requirements that may be adopted and promulgated by the Lake Charles City School Board.

5. Nothing contained in this order shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

6. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remaining paragraphs shall continue in full force and effect. If any portion, clause, or sentence of any paragraph shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such paragraph shall continue in full force and effect.

MSS
46

SEDFRE

CORE VS. CARTWRIGHT MOVING + STORAGE INCORPORATED PELAHATCHIE, MISS. 1966-1967
(AUTO ACCIDENT

Box 35
Folder 21

State Historical Society Of Wisconsin

Please Retain Original Order

PROPERTY AND LIFE SERVICES, INC.
INSURANCE SERVICE MANAGEMENT CO.
INSURANCE BROKERS - ADJUSTERS - CONSULTANTS
LIFE INSURANCE - ESTATE PLANNING - EMPLOYEE BENEFIT PLANS

132 NASSAU STREET – NEW YORK, N. Y. 10038
(212) 233-7783
Cable: "PROLIFESER", New York

Date August 3, 1966 ☐ Air Mail ☐ Sp. Del. ☐ #3817 ☐ CM # ¢ ☐ RR

RE:

Automobile Accident
November 23, 1965 involving a 1965 Chevrolet Pick-Up Truck Serial #1545T138525
Your Driver: David J. Dennis
Claim Against Cartwright Moving and Storage, Inc. of Kansas City, Mo.

	COPY TO:
Congress of Racial Equality, Inc. 38 Park Row New York, NY 10038	

Attn: Mr. Nagler

This confirms our recent phone conversation. Please send us an estimate for the repairs to your vehicle.

Very truly yours,

Harold

Harold L. Nisinson

HLN:ap

PROPERTY AND LIFE SERVICES, INC.
INSURANCE SERVICE MANAGEMENT CO.
INSURANCE BROKERS - ADJUSTERS - CONSULTANTS
LIFE INSURANCE - ESTATE PLANNING - EMPLOYEE BENEFIT PLANS

132 NASSAU STREET – NEW YORK, N. Y. 10038
(212) 233-7783
Cable: "PROLIFESER", New York

Date October 5, 1966 ☐ Air Mail ☐ Sp. Del. ☐ #3817 ☐ CM # ¢ ☐ RR

RE:

Congress of Racial Equality Inc. Versus Cartwright Moving & Storage, Inc.
Insurance Carrier: Imperial Casualty & Indemnity Co. of Omaha, Neb.
Automobile Accident of November 23, 1965 Involving a 1965 Chevrolet Truck
Serial No.: 154ST-138525

	COPY TO:
Steve Nagler Esq. 150 Nassau Street New York, New York 10038	

Enclosed is the estimate of Johnson Body Shop of Jackson, Mississippi together with a Xerox copy. We were going to handle this directly with the Imperial Casualty Company, but Charney told us to mail it to you.

It is necessary that we have the 1965 Mississippi license plate number of this truck. If you can obtain it for us we would appreciate it.

Sincerely,

Harold

Harold L. Nisinson

HLN:krm
Enclosure

FORM 103 *ASSOCIATED with EQUITY INVESTORS CO. • MUTUAL FUNDS and OTHER INVESTMENT MEDIA*

C.V. Bromberg
22 Hilliard St
Cambridge 38, Mass

10/18/66

Dear Steve,

What's new with the bureau of licenses? If nothings doing, call King for me and find out if he's changed his mind. If I remember, his number is CY 2 1611. I'd do it myself except that the transmission on the Plymouth went and I had to spend $100 down to have it repaired. I'm poor and a bit tired of the whole mess. Again, if you're feeling the same and there doesn't appear to be much hope, let me know and I'll make other and final arrangements. My address is 22 Hilliard St, Cambridge 02138, Mass. Phone 617 868 6640. Hope you're well and in good humor. Say hello to Mr. Rachlen for me.

Thanks.

Charney

10/20/66

Dear Mr. Wesenson,

Enclosed is an addressed, stamped envelope made out to George Raymond, Jr. who was involved in the accident in Miss. last year. Would you be able to send him the exact date of the accident and instructions for getting the doctor's report?

PROPERTY AND LIFE SERVICES, INC.
INSURANCE SERVICE MANAGEMENT CO.
INSURANCE BROKERS - ADJUSTERS - CONSULTANTS
LIFE INSURANCE - ESTATE PLANNING - EMPLOYEE BENEFIT PLANS

132 NASSAU STREET – NEW YORK, N. Y. 10038
(212) 233-7783
Cable: "PROLIFESER", New York

Date 12/22/66 ☐ Air Mail ☐ Sp. Del. ☐ #3817 ☐ CM # ¢ ☐ RR

RE:

Congress of Racial Equality, Inc. vs. Cartwright Moving and Storage, Inc.
Automobile Accident of November 23, 1965 at Pelahatchie, Miss.

	COPY TO:
Steve Nagler, Esq. 150 Nassau Street New York, N.Y. 10038	

Enclosed is a copy of a portion of a letter from Charney Bromberg together with an addressed stamped envelope to George Raymond, Jr., who was a passenger in CORE's truck, operated by CORE's David J. Dennis at the time of this accident.

In our last conversation, I requested you to try to learn the Mississippi license plate number of CORE's truck, and if you are successful to give me the information.

If you have it, please advise me.

Sincerely,

Harold L. Nisinson

HLN-ewr

Please reply below and return to us.

Enclosures

April 21, 1967

Mr. Harold Nisinson
132 Nassau Street
New York, New York 10038

Dear Harold:

From out of the blue ! I sent him a copy of your letter requesting the license number of the truck.

Sincerely,

Stephen M. Nagler

SMN:n

April 21, 1967

Mr. C. O. Chinn, Jr.
363A Joe Pritchard Homes
Canton, Mississippi

Dear Mr. Chinn:

I passed your letter on to Harold Nisonson and I am passing his letter requesting the license number of the truck on to you.

Sincerely,

Stephen M. Nagler

SMN:n
P.S. The picture you sent is on my office wall.

APRIL, I4

Scholarship Education
Defence Fund
150 Nassau st, New,york.

Sir;

I'am writing concering an policy on a 1955 Chev truck. The truck came to Canton, Mississippi in I965 by Mr. Chareny B rombuge fo New york. The Terry towner for civil right bought the truck, (that is a civil right group in New York.) A few months affter the truck arrive one fo our staff worker had an accident in the truck, so the truck is behing held in J Jackson, Mississippi until we can get the insurance papers on the truck. It's very important that we get those insurance papers right a way, If you dont have them, let us who dose.

yours, truely
C.o. Chinn Jr.
Community Program Director

{over}

the Work of an Head Start Girl
here in Canton, Miss. I know you
haul heard about C.D.G.M. program
here in Mississippi, this is some of
the Children Work they are dorning.

JOHNSON BODY SHOP

920 EASTVIEW ST. JACKSON, MISS.

NAME Cole	ADDRESS E 3 Z Lutz Canton Miss			PHONE	DATE
YEAR 65	MAKE Chev.	MODEL Fleetside	LICENSE No.	SPEEDOMETER	MTR. No. SER. No.
INSURANCE CARRIER	ADJUSTER		PHONE	CAR LOCATED AT	

OPERATIONS	PART NO.	PARTS		LABOR	
1 Door 3860766		79	50	10.	50
1 Door 3860765		79	50	10	50
1 panal 3787945		67	20	14	25
1 panal 3860646		64	30	14	25
1 Cop panal 16587- 3838634		62	25	35.	00
2 rear tires		52	67	2	50
1 Brattass					
Install R. D Glass				6.	00
4 L. D Glass				6.	00
1 tail gate		18.	00	4	50
1 rims		7.	50		
paint & mat		29.	50		
TOTALS		455	72	143	50
WRECKER SERVICE					
TAX		17	03		
TOTAL				616.	25

INSURED PAYS $______ INS. CO. PAYS ______ R. O. NO. ______

INS. CHECK PAYABLE TO ______

The above is an estimate, based on our inspection, and does not cover additional parts or labor which may be required after the work has been opened up. Occasionally, after work has started, worn, broken or damaged parts are discovered which are not evident on first inspection. Quotations on parts and labor are current and subject to change.

EST. MADE BY ______

AUTHORIZATION FOR REPAIR. You are hereby authorized to make the above specified repairs to the car described herein.

SIGNED ______ DATE ______

Mail To—SAFETY RESPONSIBILITY BUREAU, COMMISSIONER OF PUBLIC SAFETY, P. O. Box 958, Jackson, Mississippi

LOCATION

PLACE WHERE ACCIDENT OCCURRED: County Rankin City, town or township Pelahatchie

If accident was outside city limits indicate distance from nearest town. Use two distances and two directions if necessary. ------ miles north/south 5 miles WEST east/west of ☒ limits of ☐ center of Pelahatchie, Miss. City or town

ROAD ON WHICH ACCIDENT OCCURRED: U.S. 80

Give name of street or highway number (U.S. or State). If no highway number, identify by name

Check and complete one

☐ At its intersection with: .... Name of intersecting street or highway number

or

☒ Not at intersection: ------ feet north/south 10 feet east/west of Bridge

Show nearest intersecting street or highway, house number, curve, bridge, railroad crossing, alley, driveway, culvert, milepost, underpass, or other identifying landmark. Show exact distance, using two directions and two distances if necessary.

DO NOT WRITE IN THIS SPACE

S.

C.

TIME

Date of Accident 11-23-, 1965 Day of Week Tuesday Hour 12:30 A.M. .... P.M.

VEHICLES

YOUR VEHICLE—No. 1

1965 Chevrolet Truck

Year Make Type (sedan, truck, taxi, bus, etc.)

Vehicle License Plate 1966 Miss. Year State Number

DRIVER David J. Dennis Print or type FULL name

Driver's Address 5501 St Ferdinand Dr.; N.O., La. Street or R.F.D. City and State

Driver's License La. 1910989 State Number ☐ Chauffeur ☐ Operator ☐ Beginner Age ...... Sex ...... Race ......

OWNER Congress of Racial Equality Print or type FULL name

Owner's Address 38 Park Row N.Y 38, N.Y Street or R.F.D. City and State

PARTS OF VEHICLE DAMAGED Rear End and Frame

Approximate cost to repair vehicle $........

OTHER VEHICLE—No. 2

1957 Mac Truck

Year Make Type (sedan, truck, taxi, bus, etc.)

Vehicle License Plate .... Missouri Year State Number

DRIVER Dorsey D. Edward Print or type FULL name

Driver's Address 504 S. Roane; Webb City, Miss. Street or R.F.D. City and State

Missouri 31-497

Driver's License E48-2536-443- State Number ☐ Chauffeur ☐ Operator ☐ Beginner Age ...... Sex M Race C

OWNER Cartwright Moving - Storage, Inc. Print or type FULL name

Owner's Address 7207 Prospect Kansas City, Mo. Street or R.F.D. City and State

PARTS OF VEHICLE DAMAGED Front Bumper

Approximate cost to repair vehicle $........

Total Number Vehicles Involved 2

DAMAGE TO PROPERTY OTHER THAN VEHICLES ....

Name object, show ownership, address of owner, and state nature of damage

Approximate cost to repair $........

INJURED

Name David J. Dennis Address 5501 St. Ferdinand Dr. N.O., La. ☒ Driver ☒ Passenger ☐ Pedestrian ☐ Specify Other In vehicle No. 1

Age 25 Sex M Did person die? No If not, was person carried away from the scene? No Were there visible signs of injury—such as compound fracture, bleeding, etc.? No

Were there no visible signs of injury but person complained at scene of pain in specific parts of the body? Yes Nature and extent of injuries Undetermined Race C

Name George Raymond, Jr. Address .... ☐ Driver ☒ Passenger ☐ Pedestrian ☐ Specify Other In vehicle No. 1

Age 22 Sex M Did person die? No If not, was person carried away from the scene? No Were there visible signs of injury—such as compound fracture, bleeding, etc.? No

Were there no visible signs of injury but person complained at scene of pain in specific parts of the body? Yes Nature and extent of injuries Undetermined Race C

Miss. Opr. Form 1. 2/53.

If you fail to give full information below, we will assume that you did not have bodily injury and property damage automobile liability insurance

Is Form SR 23 (Notice of Policy for Fleets of 25 or More Automobiles) on file with the Commissioner of Public Safety for your vehicle? .... Has a certificate of self-insurance been issued by the Commissioner of Public Safety for your vehicle? ....

If so, give No. ....

If the answer to any of the above questions is "Yes" the following items need NOT be completed.

Was a Policy providing you with AT LEAST $5,000/10,000 bodily injury and $5,000 property damage liability insurance in effect on the date of the accident? Yes (Complete the following items ONLY if answer to this question is "YES")

Name of Insurance Company which issued Policy Providence Washington Insurance Co.

Policy No. ACR 624669 Policy Period from 10/24/65 to 10/24/66

Name of Policyholder Congress of Racial Equality, Inc. Address 38 Park Row; N.Y 38, N.Y.

MISSISSIPPI Form SR 21

DO NOT DETACH Dept. No. ....

Date of Accident 11-23-65 Place of Accident Pelahatchie (City or Town) Rankin (County)

Description of Vehicle Involved in Accident (Must Correspond to Vehicle No. 1 on Accident Report)

Make Chevrolet Year 1965 Type Truck Engine No. ....

Name of Operator David J. Dennis Address 5501 St. Ferdinand Dr.; N.O., La.

Name of Owner Congress of Racial Equality Address 38 Park Row; N.Y 38, N.Y.

Name of Insurance Company which issued Policy Providence Washington Insurance, Co.

Policy No. ACR 624669 Policy Period from 10-24-65 to 10-24-66

Name of Policyholder Congress of Racial Equality Address 38 Park Row - N.Y 38, N.Y.

Name of Representative Who Issued Policy Harold Nissinson Address N.Y., N.Y.

YOUR SIGNATURE David Dennis

IMPORTANT! This accident should also be reported directly to your insurance representative. Failure to report may jeopardize your automobile liability insurance.

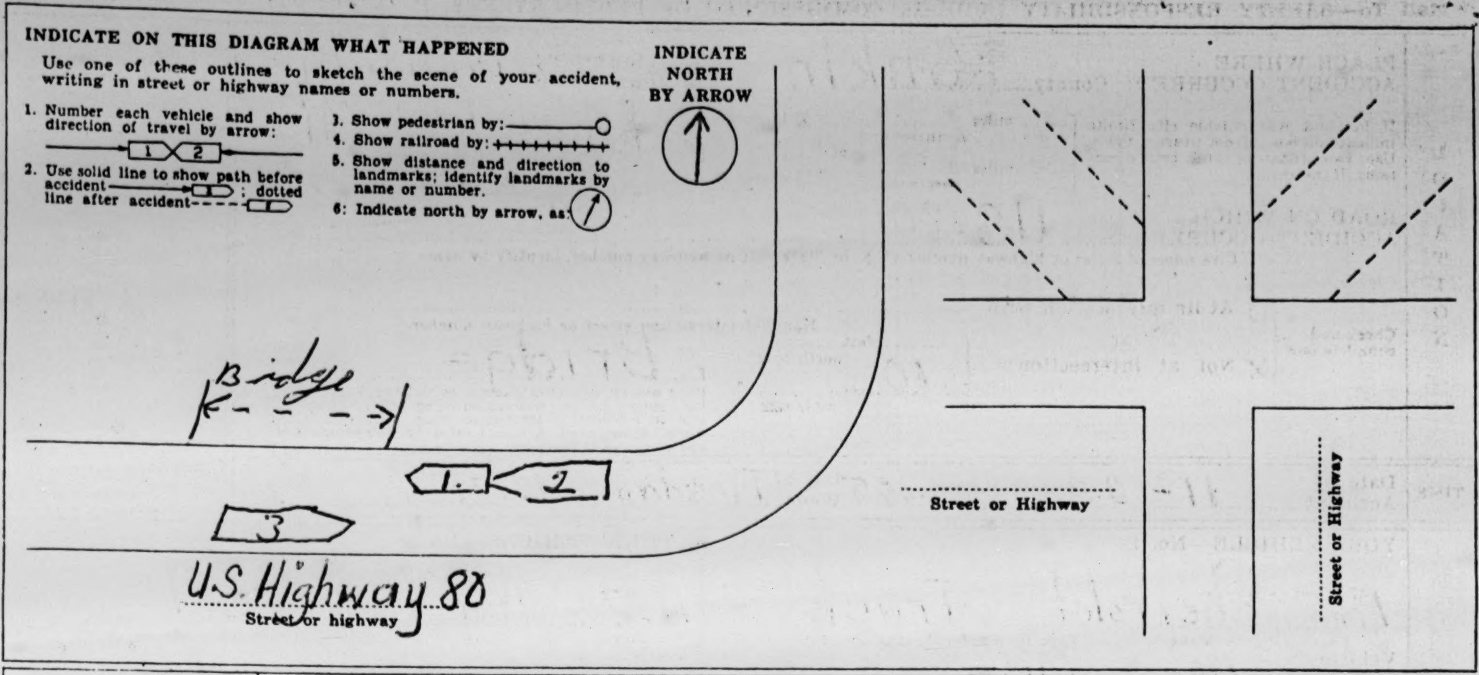
Claims Dept.

816 ← Mr White

← JA 3-4067

Imperial Casualty & Indemnity
1819 Farnam
Omaha, Neb.
344-4710

XERO COPY XERO COPY XERO COPY XERO COPY



INDICATE ON THIS DIAGRAM WHAT HAPPENED

Use one of these outlines to sketch the scene of your accident, writing in street or highway names or numbers.

1. Number each vehicle and show direction of travel by arrow:
2. Use solid line to show path before accident; dotted line after accident
3. Show pedestrian by:
4. Show railroad by:
5. Show distance and direction to landmarks; identify landmarks by name or number.
6. Indicate north by arrow, as:

ROAD SURFACE (Check one)

☒ Dry

☐ Wet

☐ Snowy or icy

WHAT DRIVERS WERE GOING TO DO BEFORE ACCIDENT

Driver No. 1 was going West ((East, east turning north, stopped, parked, etc.)) on US Highway 80 (Street or highway)

Driver No. 2 was going West ((East, east turning north, stopped, parked, etc.)) on US Highway 80 (Street or highway)

Driver 1	Driver 2	(check one for each driver)	Driver 1	Driver 2		Driver 1	Driver 2		Driver 1	Driver 2	
☒	☒	Going straight ahead	☐	☐	Making left turn	☐	☐	Starting in traffic lane	☐	☐	Parked
☐	☐	Overtaking	☐	☐	Making U turn	☐	☐	Starting from parked position	☐	☐	Backing
☐	☐	Making right turn	☒	☐	Slowing ~~or stopping~~	☐	☐	Stopped in traffic lane			

WHAT PEDESTRIAN WAS DOING

Pedestrian was going .... Direction (North, East, etc.) ☐ On ☐ Across .... (street name, highway number) From .... To .... (N.E. corner to S.E. corner, or west side to east side, etc.)

(Check one)

☐ Crossing at intersection	☐ Walking in roadway—with traffic	☐ Pushing or working on vehicle	☐ Other in roadway
☐ Crossing not at intersection	☐ Walking in roadway—against traffic	☐ Other working in roadway	☐ Not in roadway
☐ Getting on or off vehicle	☐ Standing in roadway	☐ Playing in roadway	

WITNESSES

Name Don Smith Address Rt. 4, Box 402 Age 25-30 Approximate

Name .... Address .... Age .... Approximate

Was there a police officer at the scene? yes If so, name D. G. Bray, Ptlm Department Miss Highway Patrol (Name of city dept., county, state, etc.)

DESCRIBE WHAT HAPPENED: (Refer to vehicles by number)

If third vehicle was involved, so indicate, but give data on another report form. Also use this space for additional witness or injured persons and explanation of questions not fully answered by checking in boxes provided. If more space is needed, use another report form or a sheet of paper of the same size.

I (Car 1) was proceeding West on highway 80 about 3-5 miles East of Pelahatchie, Miss. I drove around a curve and there was a truck approaching me (going East, Highway 80). The truck had on its ~~[illegible]~~ bright lights and refused to dim them. I began to blink my lights as we approached a bridge; The truck following me blinked his lights. The glare from the approaching truck and the truck following me . . . . (see attached sheet)

★SIGNATURE .... (Signature of person submitting report is required) 5501 St. Ferdinand Dr. N.O., La. (Address) 11-23-65 (Date of report)

DO NOT FILL IN BELOW — FOR USE OF INSURANCE COMPANY ONLY

To: Commissioner of Public Safety,
Safety Responsibility Bureau,
P. O. Box 958
Jackson, Miss.

(DEPARTMENT TO RETURN THIS STUB TO INSURANCE COMPANY FOR VERIFICATION)

With regard to an automobile liability insurance policy for the policy holder named on the reverse side hereof, the undersigned insurance company advises you in accordance with the items checked below:

☐ 1. No policy was in effect on the date of the accident.

☐ 2. Our policy for the named policyholder applies to him as the operator but it does not apply to the owner of the vehicle involved in the accident.

☐ 3. Our policy applies to the owner of the vehicle, but does not apply to the operator of the vehicle involved in the accident.

☐ 4. Our policy affords bodily injury coverage only. ☐ 5. Our policy affords property damage coverage only.

☐ 6. Our policy affords limits of liability less than $5,000/10,000 bodily injury and $5,000 property damage. (Indicate actual minimum limits under "Remarks")

Remarks:

.... Name of Insurance Company

Date .... By .... Authorized Representative continued from report form:

temporarily blinded me. Immediately I began to slow down to avoid hitting the bridge and the approaching truck. The truck following me smashed into the rear of the pickup truck that I was driving. At the time of the accident I was driving at a speed of approximately 30-35 MPH.

The impact of the crash jamed my passenger and me tremendously. We are presently undergoing "EXAMINATIONS" by our physicians to determine extent of injuries.

David J. Denni

XERO COPY XERO COPY XERO COPY XERO COPY

MSS
546

SEDFRE

CORE vs Clemmons, White + Christian, 1961-1964

Box
Folder

State Historical Society of Wisconsin

Please Retain Original Order

CR

NOTE:—If counsel does not reside within this Circuit, it will be permissible to sign and file this appearance, provided counsel is admitted either to the Bar of his own Circuit or of the Supreme Court of the United States.

APPEARANCES FOR COUNSEL

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 19703

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,

Appellants,

versus

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, THE LATTER IN HIS OFFICIAL CAPACITY AS MAYOR-PRESIDENT OF THE CITY OF BATON ROUGE, LOUISIANA,

Appellees.

The Clerk will enter my appearance as Counsel for the APPELLANTS

(Name) ____________

(Office Address) ____________

(City) ____________

NOTE.—*Must be signed by a Member of the Bar of the United States Court of Appeals for the Fifth Circuit. Individual and not firm name must be signed, and post-office address added.*

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT
Office of the Clerk
New Orleans, La.

NOTICE:

ATTACHED IS FORM FOR THE ENTRY OF APPEARANCE WHICH SHOULD BE SIGNED AND RETURNED PROMPTLY SO THAT YOUR NAME, AS COUNSEL OF RECORD, CAN BE ENTERED ON THE DOCKET. IF THIS IS NOT DONE IT IS POSSIBLE THAT YOU MAY NOT RECEIVE THE USUAL NOTICES, SUCH AS THE TIME FOR FILING BRIEFS, ANY PRELIMINARY ORDERS ENTERED BY THE COURT IN YOUR CASE, AND COPY OF THE PRINTED CALENDAR WHEN ISSUED SHOWING THE TIME, DATE AND PLACE YOUR CASE IS ASSIGNED FOR ORAL ARGUMENT AND SUBMISSION.

EDWARD W. WADSWORTH,
Clerk

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

New Orleans 6, La.
May 28, 1962

FOR INFORMATION OF ALL COUNSEL--PLEASE READ CAREFULLY:

Re: No. **19703 Congress of Racial Equality, John Doe and Mary Doe -vs- Bryan Clemmons, Wingate White and John Christian, The Latter in his Official Capacity as Mayor-President of the City of Baton Rouge, Louisiana.**

The record in the above entitled case is in final form. The time for filing BRIEFS is indicated in the following rule:

RULE 24, as amended, Subsections 1, 3 and 4 OF THIS COURT, READ IN PERTINENT PART AS FOLLOWS:

1. The Clerk shall mail a notice to each party or his counsel so soon as the record by printing, or otherwise, is in final form for a hearing. The counsel for the appellant, or petitioner, shall file with the Clerk of this Court within thirty days from the RECEIPT of such notice***twenty copies of a printed brief, one to be signed in handwriting by an attorney of this Court who has entered an appearance in the case; together with a certificate that a copy has been mailed to or previously served on the opposite party or parties. Four copies of typewritten briefs in behalf of poor persons in forma pauperis cases, with a like certificate of service, shall be sufficient. (All such typewrittan briefs (motions or petitions, etc.) should be backed when filed.)

3. The Counsel for appellee or respondent shall file with the Clerk of this court within twenty (20) days from the service upon him of opponent's brief***twenty copies of a printed brief, with a certificate that a copy has been mailed to or personally served on his opponent or opponents. His brief shall be of a like character with that required of the appellant or petitioner, except that no specification of errors shall be required and no statement of the case unless that presented by the appellant or petitioner is controverted.

4. Reply or supplemental briefs in printed form, and containing a certificate of service upon opposing counsel, may be filed at any time without special leave of court.

Certificate of service upon all opposing counsel must be incorporated in all copies of briefs, motions, petitions or other documents filed.

Since the Court desires that briefs from all parties be on file for its consideration well in advance of the assigned date for hearing, counsel should make every effort to file their briefs by the date due.

Notice will be issued to all counsel for whom an appearance has been entered of the date and place fixed for hearing, usually at least thirty (30) days in advance thereof.

RULE 25, as amended January 19, 1956, reads in part as follows:

"Not more than one-half hour on each side will be allowed for the argument, without special leave of the court**."

However, counsel for any party may waive oral argument and submit his case on brief, if he so desires, and notifies this office by the date fixed for hearing.

Any written request for special handling not provided for in the Rules, whether by formal motion, letter or otherwise, as well as any information which counsel desire the Clerk to communicate to the Court, should be submitted in quadruplicate, with an original and three legible copies.

EDWARD W. WADSWORTH
Clerk

Copy Received
By Mail 8/27/62
VLADECK & ELIAS
Attorneys for Appellants

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

NO. 19703

CONGRESS OF RACIAL EQUALITY, JOHN DOE
and MARY DOE

APPELLANTS

VS.

BRYAN CLEMMONS, WINGATE WHITE and
JOHN CHRISTIAN

APPELLEES

MOTION FOR EXTENSION OF TIME TO FILE BRIEF

NOW comes BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana, and moves the Court that their time for filing a brief herein be extended for an additional fifteen days until September 22, 1962.

R. Gordon Kean, Jr., Parish Attorney

John V. Parker
John V. Parker, Assistant Parish Attorney

Sargent Pitcher
Sargent Pitcher, District Attorney

John F. Ward Jr.
John F. Ward, Jr., Assistant District Attorney
Attorneys for Bryan Clemmons, Wingate White and John Christian, Appellees

I, JOHN V. PARKER, Assistant Parish Attorney and Attorney for BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, hereby certify that I have mailed a copy of the foregoing motion to Carl Rachlin and Robert Collins, Attorneys for Congress of Racial Equality, John and Mary Doe, Appellants, this 24th day of August, 1962.

John V. Parker
John V. Parker

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

---X

THE CONGRESS OF RACIAL EQUALITY,
JOHN DOE and MARY DOE,

Appellants,

No. 19724

versus

C. H. DOUGLAS, individually and as
Mayor of the CITY OF McCOMB CITY,
MISSISSIPPI, and MR. & MRS. AUBREY
McGEHEE,

Appellees.

---X

---X

CONGRESS OF RACIAL EQUALITY, JOHN
DOE and MARY DOE,

Appellants,

versus

No. 19703

BRYAN CLEMMONS, WINGATE WHITE and
JOHN CHRISTIAN, the latter in his
official capacity as Mayor-President
of the City of Baton Rouge, Louisiana,

Appellees.

---X

STATE OF NEW YORK)
: SS:
COUNTY OF NEW YORK)

CARL RACHLIN, being duly sworn, deposes and says:

I am one of the attorneys for the appellants in both of the cases herein.

Both cases involve similar injunctions against appellants, raising similar factual and legal questions, as has been set forth more fully in the briefs on file with this Court. Counsel who will argue both cases resides in New York.

At the present time, Congress of Racial Equality against Douglas, et al, No. 19724, is scheduled to be heard on November 14th, 1962 in Houston. No date has been set for

Congress of Racial Equality against Clemmons, at al, No. 19703.

We urge that arguing both cases on the same date will serve a useful purpose. It will also be of great convenience to counsel for appellants.

May we therefore respectfully request that the arguments in both cases be heard on the same date, if possible, in New Orleans or Atlanta. We do not believe that counsel for appellees or their parties will suffer any inconveniance thereby.

Sworn to before me this
23rd day of October, 1962.

Sylvan H. Elias

SYLVAN H. ELIAS
Notary Public, State of New York
No. 60-1100025
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 196

Copy Received

By Mail 10-29-62

VLADECK & ELIAS

Attorneys for CORE

IN THE

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

NO. 19,703

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,
Appellants,

VERSUS

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN,
the latter in his official capacity as Mayor-
President of the City of Baton Rouge, Louisiana,
Appellees.

OPPOSITION TO MOTION FOR SPECIAL ASSIGNMENT FOR ARGUMENT

TO THE HONORABLE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT:

1.

Receipt is acknowledged of a copy of the motion of appellants in the above entitled and numbered matter to consolidate argument with the case entitled "The Congress of Racial Equality, John Doe and Mary Doe versus C. H. Douglas, Individually and as Mayor of the City of McComb City, Mississippi, and Mr. & Mrs. Aubrey McGehee", Number 19,724 of the Docket of this Court and requesting special assignment of these matters for November 14, 1962.

2.

Appellees oppose such consolidation upon the following grounds:

(a) The cases do not involve the same facts, parties or attorneys, Number 19,703 having arisen in the City of Baton Rouge, Louisiana, and Number 19,724 having apparently (from its caption) arisen in the City of McComb, Mississippi.

(b) Appellees object to consolidation or confusion of their case with another case with which they are completely unfamiliar.

3.

Appellees oppose special assignment of this matter for oral argument upon the following grounds:

(a) Under Section 3 of Rule V of the Rules of this Court, counsel are entitled to not less than 30 days notice of the docketing of this matter for oral argument.

(b) The motion of appellants does not demonstrate that an immediate hearing is required in this matter under Section 2 of Rule VIII of the Rules of this Court, especially where counsel for appellants himself requested a delay in the time for filing his brief.

(c) Counsel for appellees already have other matters assigned for trial on November 14, 1962, in other courts, which render it impossible for them to be present for oral argument on November 14, 1962, demonstrating the reason for the 30 days notice required by Section 3 of Rule V, and Section 1 of Rule 35, Rules, Fifth Circuit.

Movers, therefore, move that the motion for consolidation and special assignment be rejected and that this matter be docketed for oral argument in regular order according to the rules of this Court.

BY ATTORNEYS,

R. Gordon Kean Jr
R. Gordon Kean, Jr., Parish Attorney

John V. Parker
John V. Parker, Asst. Parish Attorney

Sargent Pitcher
Sargent Pitcher, District Attorney

John F. Ward Jr
John F. Ward, Jr., Asst. District Attorney

Attorneys for Bryan Clemmons, Wingate White and John Christian, Appellees

CERTIFICATE

I, JOHN V. PARKER, Assistant Parish Attorney and Attorney for BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, hereby certify that I have mailed a copy of the foregoing opposition to motion for special assignment for argument to Carl Rachlin and Robert Collins, Attorneys for Congress of Racial Equality, John and Mary Doe, Appellants, this 24th day of October, 1962.

John V. Parker
John V. Parker

CR

United States Court of Appeals for the Fifth Circuit.

NEW ORLEANS, LOUISIANA

Ordered that the following cases be assigned for hearing at NEW ORLEANS, LOUISIANA, in the Old Post Office Building, 600 Camp Street, on the days hereinafter named to-wit:

MONDAY, DECEMBER 3, 1962

No. 19743. David B. Bush vs. United Benefit Fire Insurance Company.
No. 19468. Tony Anthony vs. Ranco Incorporated.
No. 19645. Mrs. Edna Latil Nichols vs. Hartford Accident & Indemnity Co.
No. 19493. Phoenix Indemnity Company, etc., et al. vs. Marquette Casualty Co.

TUESDAY, DECEMBER 4, 1962

No. 19633. Melvin E. Drewery, Jr. vs. Daspit Bros. Marine Divers, Inc.—Daspit Bros. Marine Divers, Inc. vs. Shell Oil Co.
No. 19970. Michigan Mutual Liability Co. vs. Leslie B. Franklin, et al.
No. 19415. United States of America vs. Diversified Services, Inc., etc.
No. 19548. Leo P. McKee, etc. vs. Sidney F. Hood, et al.

WEDNESDAY, DECEMBER 5, 1962

No. 19571. Strachan Shipping Co. vs. Jos. Alexander, et al.—Meiji Kaiun, K. K. vs. Jos. Alexander, et al.
No. 19512. W. Willard Wirtz, Secretary of Labor, etc. vs. Elwyn H. Ferguson, etc.
No. 19525. Crane Company vs. Richardson Construction Co., et al.
No. 19871. Robert T. Gullett vs. Best Shell Homes, Inc. of Tennessee.

THURSDAY, DECEMBER 6, 1962

No. 19836. B. M. Pulliam vs. Gulf Lumber Company, Inc., et al.
No. 19588. Eugene P. Murphy, et al. vs. The St. Paul Fire and Marine Ins. Co.
No. 19689. Addellah Meliani and Mohamed Falih vs. United States of America.
No. 19888. Carl M. Cathcart vs. United States of America.

MONDAY, DECEMBER 10, 1962

No. 19580. Reliance Insurance Co. vs. Orleans Parish School Bd. (And Reverse Title).
No. 19795. Bry-Man's, Inc. vs. Herman F. Stute, Jr., etc.
No. 19048. Gerald Milton Seidler vs. United States of America.
No. 19595. Alfred Gene Gorman vs. United States of America.

TUESDAY, DECEMBER 11, 1962

No. 19822. Burr S. Cameron vs. United States of America.
No. 19703. Congress of Racial Equality, etc. vs. Bryan Clemmons, et al.
No. 19991. Miles Raymond Baggett vs. Martin J. Wiman, Warden of Kilby Prison, etc. (And Reverse Title).
No. 19643. Charles T. Samuelson vs. Bethlehem Steel Company (And Reverse Title).

WEDNESDAY, DECEMBER 12, 1962

No. 19549. City of Fort Lauderdale vs. East Coast Asphalt Corp., et al.
No. 19635. United States of America vs. South Florida Asphalt Co., et al.
No. 19864. Hardrives Co., Inc., et al. vs. East Coast Asphalt Corp., et al.
No. 19870. New Orleans and Northeastern Railroad Co. vs. J. U. Bozeman, et al.

THURSDAY, DECEMBER 13, 1962

No. 19721. Rufus C. Barkley, Jr., et al. vs. Emlyn Methvin Spence Barkley, Individually, etc.
No. 19765. Surf & Sun Realty Company, Inc. vs. William B. Kline.
No. 19829. Edward Davis vs. The Honorable James H. Davis, Governor of the State of Louisiana, et al.
No. 19616. Ben A. Johnson vs. Victor G. Walker, Warden, Louisiana State Penitentiary, et al.

EDWARD W. WADSWORTH,
Clerk of the United States Court of Appeals
for the Fifth Circuit.

BY THE COURT:

NEW ORLEANS, LOUISIANA, November 1, 1962.

NOTE—In view of the Court's practice of studying all briefs on file in advance of the hearing, the desirability of counsel filing their briefs by the due date is obvious.

COURT CONVENES AT 9:30 A. M.

E. S. Upton Printing Co.
New Orleans, Louisiana—11-1-62—300

- -

This form must be filled in by counsel, signed, detached, and promptly returned to:

Edward W. Wadsworth, Clerk
U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana ...., 1962

Dear Sir:

I hereby acknowledge receipt of copy of your printed calendar showing my case in re:

No. ...., ...vs. ....

assigned for hearing at 9:30 A. M. on ...., 1962, in Room 222 Old Post Office Building at New Orleans, Louisiana. The Clerk's Office will be advised by 9:00 A. M. on the date the case is assigned the name of counsel who will present oral argument.

Mrs James
Deputy Clerk

IN THE

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT

19724
Douglas

No. 19,703

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,
Appellants,

versus

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Louisiana, Hon. E. Gordon West, Judge.

ORIGINAL BRIEF ON BEHALF OF BRYAN CLEMMONS, ET AL., APPELLEES.

R. GORDON KEAN, JR., Parish Attorney,
JOHN V. PARKER, Assistant Parish Attorney,
JOHN F. WARD, JR., Assistant District Attorney,
SARGENT PITCHER, District Attorney
~~[illegible]~~
Attorneys for Appellees Clemmons et al

Franklin Press, Inc. *Baton Rouge, La.*

INDEX

Page

A PRELIMINARY STATEMENT 1

STATEMENT OF THE CASE 7

ARGUMENT

Point I—The Principles of the First and Fourteenth Amendments to the Constitution Are Not Absolute; They Are the Subject Subject of Reasonable Regulation............. 19

Point II—Injunction Was a Proper Remedy; the One Issued in These Proceedings Was Within the Jurisdiction of the District Court and violates No Constitutional Guarantees...... 25

Point III—Injunctive Orders May Be as Broad as May Be Required to Secure the Relief Sought 34

CONCLUSION 40

TABLE OF CASES

Page

✓ *Brewer v. Hoxie School District No. 46*, 238 F.2d 91........29, 31

✓ *Bullock v. United States*, 265 F.2d 683.............................. 33

Chaplinsky v. New Hampshire, 315 U.S. 568..................... 35

✓ *Cook Chemical Co. v. Cook Paint and Varnish Co.*,
185 F.2d 365 34

Cox v. State of New Hampshire, 312 U.S. 569, 85 L.Ed.
1049, 61 S.Ct. 762, 133 A.L.R. 1396 ....19, 23, 41

Feiner v. People of State of New York, 71 S.Ct. 303........20, 25

Herndon v. Lowry, 301 U.S. 242.. 36

*International Union of Mine, Mill and Smelter Workers
v. Tennessee Copper Co.*, 31 F. Supp. 1015................. 29

✓ *Interstate Commerce Commission v. Keeshin Motor
Express Co.*, 134 F.2d 228.. 36

✓ *Kasper v. Brittain*, 245 F.2d 92..31, 32

Kovacs v. Cooper, 336 U.S. 77, 93 L.Ed. 513, 10 A.L.R.
2d 608 24

Lester v. Parker, 235 F.2d 787 35

May Dept. Stores Co. v. N.L.R.B., 326 U.S. 376.................. 36

Milliken v. Stone, 7 F.2d 397.. 29

modification of order in ~~[illegible]~~ trade-mark infringement

criminal contempt

Page

National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U.S. 240, 59 S.Ct. 490 42

N.L.R.B. v. Express Co., 312 U.S. 426 34

Poulos v. State of New Hampshire, 345 U.S. 395, 97 L.Ed. 1105, 73 S.Ct. 760 ....20, 33

Schneider v. Irvington, 308 U.S. 146, 84 L.Ed. 155........... 21

Sun Publishing Co. v. Walling, 140 F.2d 445, 322 U.S. 728 34

The Oakmar, 20 F. Supp. 650 42

Thompson v. City of Louisville, 362 U.S. 199..................... 35

Tribune Review Publishing Co. v. Thomas, 153 F. Supp. 486 20

U. S. v. Swift & Co., 386 U.S. 106 ....34, 35

United States v. U. S. Klans, Knights of Ku Klux Klan, Inc., 194 F. Supp. 897..22, 31

Winters v. People of the State of New York, 333 U.S. 507 35

Yick Wo v. Hopkins, 118 U.S. 356 36

OTHER AUTHORITIES

Page

28 American Jurisprudence, Injunctions, Section 157......25, 26

28 American Jurisprudence, Section 160 ....26, 27

43 Corpus Juris Secundum, Injunctions, Section 152, p. 764 29

Louisiana Revised Statutes 14:97, 14:100.1 and 14:103.1 ....27, 28

42 U.S.C.A. Section 1985(3) 29, 30

IN THE

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT

No. 19,703

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,
Appellants,

versus

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Louisiana, Hon. E. Gordon West, Judge.

ORIGINAL BRIEF ON BEHALF OF BRYAN CLEMMONS, ET AL., APPELLEES.

May It Please the Court:

A PRELIMINARY STATEMENT

This is a suit in which the Mayor-President, individually and in his capacity as the chief administrative officer of the

City of Baton Rouge and the Parish of East Baton Rouge, Louisiana, together with the Sheriff in his capacity as the chief law enforcement officer for the Parish of East Baton Rouge, and the Chief of Police, in his capacity as the chief law enforcement officer of the City of Baton Rouge, invoked the equity jurisdiction of the Federal Courts to permanently enjoin a New York corporation known as the Congress of Racial Equality, and others acting in concert with it, from performing and carrying out certain **unlawful** acts on the grounds that if these defendants persisted in their **unlawful** activities they would cause the plaintiffs, both individually and in their official capacities, as well as the public generally, irreparable damage through resulting disturbances of the peace and ultimate violence and bloodshed.

Because of the extreme seriousness of the local situation during and following defendants' unlawful activities and demonstrations occurring December 15, 1961, and because repeated such occurrences were threatened,[1] plaintiffs applied for and were granted a temporary restraining order by the District Court. The fact that a semblance of public order was restored immediately and without further violence or bloodshed, can be attributed solely to this action of the District Court. We believe that the record and the evidence clearly reveals that if the restraining order had not been issued, similar unlawful demonstrations would have been attempted the next day, and the next, and the next, with terrible consequences to the community, as well as to those participating in the demonstrations.

At the hearing on the permanent injunction, plaintiffs offered numerous witnesses—newspaper and television reporters who were present during the demonstrations of December 15th, public officials, and law enforcement officers. As found by the District Judge, all of these witnesses were of the "considered opinion * * * that there was a clear and present danger of violence and of a breakdown of governmental authority" directly attributable to "the manner in which the congregation and demonstration of the estimated 2,000 persons involved was conducted under the apparent leadership of B. Elton Cox,"[2] the latter being the recognized leader of the CORE organization in Baton Rouge.

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[1] Tr. pages 273-279; Tr. page 315 and particularly the statement of Ronnie Moore, a CORE leader, that "no war was ever without bloodshed."

The defendants offered no witnesses; presented no evidence. They sought in the District Court, and do so here, to justify their unlawful activities solely on the grounds that they have the right to assemble and to express themselves on the public streets at any time, at any place, and in any manner that they so choose, regardless of its interference with the rights of other citizens to use the streets for normal purposes and irrespective of whether or not such use of the streets results in public disorder and threatened breaches of the public peace.[3]

Not only do appellants stand on the right to assemble on, and use, the public streets as they please, but they further contend that they may exercise these rights in a militant and aggressive manner which can only have the effect of causing other citizens—reasonable men and women—to be afraid to use the streets as they have a right to do—and, when, for this reason, other citizens do not challenge their "take over" of the public streets, appellants contend they have committed no "acts of violence" for which the City or the public may seek relief. In other words, when appellants, and their 2,000 supporters, "take over" the streets of downtown Baton Rouge, two alternatives become apparent—other citizens are immediately deprived of their rights to use the public streets, or may do so only at the risk of conflict with appellants; in order to insure that other citizens may use the streets without conflict and in a normal manner, the police authorities may endeavor to disperse the opposing groups. In either case, violence is imminent, and can be avoided only by the most judicious use of police authority. If the conflict continues and grows, however, even the most judicious use of police authority cannot prevent violence—relief can be had only by prohibiting continuance of the source of conflict.

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[2] 201 F. Supp. at page 745.

[3] Appellants' brief, page 6.

Because of this, the issue in this case is hardly that suggested by appellants.[4] Obviously fundamental rights of citizens may not be abridged "merely because other groups of citizens, not in sympathy with their views, act in a hostile manner." But this is **not** the issue here. Nor is the issue that of segregation, as counsel for appellants would imply, for the decision here must be the same irrespective of the race, color, or creed of those who attempt to carry out these or similar demonstrations.

The basic issue here is this: Is injunctive relief a proper remedy where the continuance of such conduct by appellants or any other similar group would deprive other citizens of the community of their right to peaceably use the streets for normal purposes and where violence is likely to occur if these other citizens attempt to maintain their right to use the streets in the face of appellants' conduct.

[illegible] statement [illegible]

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[4] Appellants' brief, page 7.

In addition, it must be recognized that this was not a **small** group of citizens banded together to sing hymns.

This was a group of 2,000 individuals under the determined leadership of CORE and responsive only to the commands of one B. Elton Cox,[5] which conducted a "march" on the Parish Courthouse for the alleged purpose of protesting the arrest of persons previously arrested for violations of Louisiana law. Their real purpose and intentions were unknown. The previously stated purpose of the organization, however, was that of actually violating and encouraging the violation of local laws; in other words, that of taking the law into their "own hands." With this background, for all the police authorities knew, this large group of well disciplined and controlled individuals could have been "marching" on the Courthouse for the purpose of "taking" it over. The fact is that their presence in the vicinity of the Courthouse caused concern that there might be a riot in the jail.[6] All of this was in addition to the fact that other citizens were deprived of their normal rights, and the entire downtown area almost immobilized. Under these circumstances, the fact that no physical violence occurred is more a tribute to the presence of mind of the police authorities involved than it is evidence of any intention on the part of Cox and his supporters that none should occur. If the crowd had not been dispersed, who can say what violence might have followed, or what affirmative action might have been taken by the now excited and aroused

[illegible]

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[5] Tr. page 311 and the testimony of Sheriff Clemmons to the effect that group refused to move on command of Cox who told them "Don't move," after they had been ordered to do so by the Sheriff. See also, the testimony of Captain Henderson (Tr. page 63) to the effect that the demonstrators "ignored" his request that they clear the highway and did so only on instructions of "Reverend Cox."

[6] According to Sheriff Clemmons: "It practically did." (Tr. page 309)

crowd of demonstrators. The testimony of the witnesses is eloquent enough indication that violence was imminent and the situation dangerous.

It is obvious that there are conflicting rights here involved, but as so eloquently pointed out by the District Judge: "The freedoms guaranteed by the United States Constitution and the Amendments thereto, and the civil rights accorded by the Statutes of the United States, are freedoms and rights guaranteed to **all** people, and not a favored few."[7]

For this reason:

> "To deprive one group of citizens of their right to unhampered use of the public streets, highways and sidewalks, to deprive them of unrestricted ingress and egress to public or private buildings, to deprive them of the right to have available, if needed, adequate police protection, to deprive the storekeeper of his right to trade with customers of his own choice and to otherwise conduct his business as he sees fit, to allow interference with the orderly functions of government and to permit disobedience of orders emanating from properly constituted police and governmental authorities in the lawful exercise of their official functions, all in order to give to another group of citizens the right to assemble or to speak in an unrestricted manner, would certainly fall far short of balancing these fundamental rights so as to do substantial justice to all persons involved."[8]

On the basis of the "uncontradicted evidence adduced at the time of the trial,"[9] the District Judge found that violence could only be avoided, and the community peace and good order preserved, by enjoining appellants' activities. Such an injunction does not destroy their fundamental freedoms, as they would have this Court believe; it merely requires that they exercise those freedoms in a manner "consistent with the orderly function of government" and in such a way as to "not unduly interfere with the basic constitutional rights of others."[10]

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[7] 201 F. Supp. page 748

[8] 201 F. Supp. page 749

[9] 201 F. Supp. page 745

These appellants have demonstrated by their past actions and pronouncements that they are unwilling to conduct themselves in such a proper manner; for this reason, the injunction now in force should remain in effect.

STATEMENT OF THE CASE

We do not agree with appellants' interpretation of the facts. We believe the findings of fact made by the District Court to more correctly and impartially state the case. For this reason, we take the liberty of quoting these findings in full:

> "Some time shortly prior to December 8, 1961, the following letter was directed to and received by some twelve merchants and department stores in the City of Baton Rouge, Louisiana:
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> > " 'Dear Sir: We have made several attempts by telephone to make appointments to negotiate with you in regard to securing equality in employment and desegregation of facilities for all citizens. We want to negotiate, but promptness, cooperation, and action are essential prerequisites in order to achieve racial equality through negotiation.

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[10] 201 F. Supp. page 749

> " 'In spite of the busy Christmas season, it is necessary that we confer with you in person by Saturday, December 9, 1961, before 12:00 noon. We realize that Christmas is a busy season for buying and selling.
>
> " 'If you cannot manage to arrange a personal conference before or on the deadline, kindly inform us as to your intentions. We hope that you will take immediate action in meeting the aforesaid ends. In good faith, we submit our grievances and request satisfaction.
>
> " 'Sincerely yours,
>
> " 'EXECUTIVE COMMITTEE OF BATON ROUGE CHAPTER OF CONGRESS OF RACIAL EQUALITY'

"At approximately the same time, CORE, through its members and representatives, distributed circulars, or handbills urging Negroes to refuse to patronize the twelve stores listed thereon until those stores afforded 'better job opportunities' to the members of the Negro race, and until these stores desegregated all of their various facilities. Also, on December 8, 1961, and December 9, 1961, CORE sponsored a 'clinic' in Baton Rouge, Louisiana, billed in their notices as 'Direct Non-Violent Action Clinic.' On the program for the clinic was such items as 'workshops' in (1) sit-ins, (2) picketing, (3) freedom rides, (4) voter registration, (5) jail discipline, (6) discrimination of job opportunities, (7) hit and run demonstrations, (8) selective buying, and (9) reports of various groups involved in demonstrations.

"On December 11 and 12, 1961, following this clinic, pickets were established in front of the several stores to whom the letters previously referred to had been directed. These pickets were members of the Negro race, and were apparently acting in accordance with instructions received from the leaders and representatives of CORE at the clinic held on December 8 and 9, 1961. They carried signs urging that the stores be boycotted because of their alleged discrimination against members of the Negro race. On Wednesday, December 13, 1961, these pickets were advised by officers of the Police Department of the City of Baton Rouge and/or by deputies of the Sheriff's Department of the Parish of East Baton Rouge that they were in violation of certain State Statutes, and that continued violations of these statutes would result in arrest and prosecution. On the following day, December 14, 1961, the pickets continued their activities, despite the warnings of the Police Department and/or Sheriff's Department, and the arrest and incarceration in the parish jail of some twenty-three pickets followed.

"It was apparently the arrest of these pickets that brought about the mass demonstration which occurred in the City of Baton Rouge, Louisiana, on December 15, 1961.

"On the night of December 14, 1961, through unofficial sources, the Police Department and the Sheriff's Department learned that a large congregation of Negro people were to march from Scotlandville, Louisiana, north of the City of Baton Rouge, Louisiana, into the City of Baton Rouge, a distance of some four and one-half miles, to demonstrate against the arrest of the pickets who were incarcerated in the Parish jail located atop the Courthouse Building in the very heart of the City. At about 9:00 o'clock a. m. on the morning of December 15, 1961, students from Southern University, an all-Negro university located in Scotlandville, Louisiana, and others, went to a church building close to the university campus where they congregated for approximately 30 to 40 minutes. This congregation of Negroes under the direct control and supervision of officers, members, or representatives of CORE, then started their march to Baton Rouge, some four and one-half miles away. They marched down the main highway to Baton Rouge, and at times completely blocked the street to vehicular traffic. The police officers on duty in the area used public address systems to request the crowd to clear the highway. The requests were apparently ignored and the street was blocked to traffic for approximately 15 minutes. The crowd consisted of about 'two blocks of people,' but the witnesses could not estimate the number of persons participating at this stage of the demonstration. After about fifteen minutes of marching, and apparently ignoring police requests to clear the highways, an individual identified as Rev. B. Elton Cox inquired of one of the police officers present as to the proper procedure for his followers to use in their march to Baton Rouge. He was informed by the officer that it was a violation of Louisiana law for the marchers or demonstrators to obstruct the road or highway and that they must stay on the shoulders of the highway, leaving the highway clear for use by other traffic. Cox was identified by every witness who testified as an officer and leader of CORE, and he was further identified as a resident of the State of North Carolina. While the crowd completely ignored instructions given them by the police officers, they apparently obeyed all orders given them by Cox. When they marched through intersections, it was necessary for police officers to manually operate the traffic lights in order to avoid accidents as the marchers refused to heed these traffic signals. However, after they reached a point within about one mile of the center of Baton Rouge, and upon instructions from Cox, the marchers began to obey the traffic lights and wait for the proper signal before crossing intersections. At one point during the march to Baton Rouge, there were five white men who attempted to block the path of the marchers, and they were immediately dispersed by the police officers in order to avoid any incident between the white men and the marching demonstrators. This march from Scotlandville to Baton Rouge took approximately two or three hours to complete.

"The marchers were apparently divided into 'squads,' with each squad having a leader who gave orders. Each of the leaders wore 'overseas' caps with the word 'CORE' written on each side, and these 'squad leaders' took their orders and instructions directly from Cox. The uncontradicted testimony shows that these demonstrators refused to take orders from the police and refused to follow police instructions, but that they apparently obeyed implicitly the orders or instructions given them by their squad leaders or by Cox.

"Neither the officers or representatives of CORE, nor any of the demonstrators, made a request of the Police Department or of the Sheriff's Department for a permit to hold a parade or to stage a demonstration as is required by an ordinance of the City of Baton Rouge. Despite this fact, at no time during this march from Scotlandville to Baton Rouge, Louisiana, did the Police Department or Sheriff's Department or any other State, City, or Parish official attempt to interfere with the demonstrators or to break up their parade. During this entire march, according to the unrefuted testimony, the only request made by the police officers of the demonstrators was that they not block the highways or sidewalks in violation of existing statutes and ordinances of the State of Louisiana, the Parish of East Baton Rouge, and the City of Baton Rouge.

"John Christian, the Mayor-President of the City of Baton Rouge and Parish of East Baton Rouge, testified that when he heard of this pending demonstration, he specifically instructed the Chief of Police and the Sheriff to provide all available protection to the marchers and demonstrators so long as their activities were orderly and lawful. He testified that there was no attempt made to prevent the 'parade' or the demonstration in any way. However, after the demonstrators reached the downtown area of Baton Rouge, when it was estimated that there were somewhere between 1,500 and 2,000 people involved, the testimony shows that it was deemed necessary to use all police officers and deputy sheriffs available, including the recalling to duty of some sixty off-duty personnel. All available men from the Police Department and the Sheriff's Office were utilized to control traffic and to look out for the safety of the people involved in this demonstration, as well as other spectators, and that as a result, the rest of the City of Baton Rouge and the Parish of East Baton Rouge, outside of the immediate downtown area, was left virtually without police protection of any kind. The testimony further shows that when these demonstrators congregated in the downtown area, the entire sidewalk for an area of approximately two blocks, was completely blocked to all other traffic, and that ingress and egress to houses or other establishments in the vicinity was completely blocked. The testimony further showed that this crowd of some 2,000 people assembled on the west side of the street by the Courthouse where the jail was located, and that they began singing songs, reciting prayers, and listening to speeches made by Cox, who was, apparently, in complete charge of the entire demonstration. On the opposite side of the road a crowd of 200 to 300 white persons had gathered, and it was the testimony of everyone who testified that the entire situation was 'tense with impending violence.' When the demonstrators first arrived in the downtown area, Chief Wingate White, of the City Police force, personally conferred with Cox concerning his intentions. He was informed by Cox that these demonstrators wanted to appear before the Courthouse to protest the arrest of the twenty-three pickets and to say the Oath of Allegiance; sing two songs; and that he, Cox, would make a four-minute speech and then they would disperse and go back to the campus at Southern University. Cox advised Chief White that this demonstration would last approximately seven minutes. Chief White then advised Cox that such a demonstration would be permissible so long as it was orderly. During the entire demonstration, Cox was apparently in complete control of the crowd. They shouted and yelled at his commands, and they moved and stopped upon his orders. After the demonstrators had sung hymns, prayed and listened to speeches, Cox, according to the uncontradicted testimony of several witnesses, stood up before the crowd and told them that it was lunchtime, and suggested that they all go to the lunch counters in the twelve stores on the 'list' and demand to be served. He suggested that if service was denied them, they should refuse to remove themselves from the lunch counters for a period of one hour. It was at this moment, according to the uncontradicted testimony adduced at the trial of this case, that an outbreak of physical violence was almost a certainty. When Cox urged the crowd to sit in at the lunch counters, where, he advised them, he knew that they were 'not welcome,' the crowd cheered, applauded, and became extremely boisterous, and according to all of the evidence, was fast approaching a 'mob reaction.' It was shortly after this reaction that the demonstrators were forced to disperse by the use of tear gas fired into their midst by police officers. However, before the tear gas was used, the Sheriff, believing that the situation was about to get out of hand, stood before the crowd using an electric megaphone and identified himself and suggested to the demonstrators that they had been allowed to demonstrate in accordance with their stated intentions, and that since they had been permitted to do everything that they had requested to do, he now felt that it was time for the demonstration to end. He requested them to disperse at that time. However, at this point, Cox stood before the crowd, folded his arms, and shouted to the crowd 'Don't move.' Whereupon some of the Sheriff's officers began to go toward the crowd as though to force them to disperse. The Sheriff recalled his men and again identified himself with the use of the electric loudspeaker, and again requested them to break up the demonstration and disperse. The testimony shows that Cox again stood before the crowd and shouted 'Don't move,' and the crowd did not move. At this point, the Sheriff ordered the police officers to fire tear gas bombs into the crowd. Tear gas was fired into both the colored demonstrators on the west side of St. Louis Street and the white crowd which had congregated on the east side of St. Louis Street, and within less than two minutes the crowd was completely dispersed.

"Chief White, who has been in active police work since 1937, testified that it was his considered opinion that there was an immediate danger of an outbreak of physical violence during the demonstrations of this large crowd of people in the downtown area of Baton Rouge on December 15, 1961. Because of the large size of the crowd and the tenseness of the situation, he, and the Sheriff, had recalled all available police officers to duty to cope with the situation and what they believed to be impending dangers. As a result, during the period of these demonstrations, there was practically no police protection of any kind available for the rest of the City of Baton Rouge or the Parish of East Baton Rouge wherein approximately 230,000 people reside.

"But even the dispersal of the crowd by the use of tear gas did not end the demonstration. After the crowd was dispersed with tear gas, they again re-formed into smaller groups on Third Street, which is the main street in the City, where they remained milling around on the streets and sidewalks for approximately one hour. During this time, practically the entire police force and the personnel of the Sheriff's Department was utilized in the Third Street area in order to prevent any outbreaks of violence following the initial demonstrations. At one time during this latter part of the demonstration, approximately 200 boys of high school age arrived on the scene dressed in old clothes and giving every indication that they were present to participate in violent activities of some kind. Upon orders from the police, this group of white boys was dispersed, with the exception of one white boy who, upon his refusal to obey the police orders to disperse, was arrested.

"Every law enforcing officer who testified in this case, together with every State official who testified, was of the opinion that as this demonstration progressed, and as it reached its climax in the vicinity of the Courthouse, it presented an extremely dangerous situation. There was every evidence of pending danger and violence, and this crowd was on the verge of becoming a mob. As an example, one of the police officers testified that while there was no actual physical violence, nevertheless, during the course of this demonstration, he heard remarks from the demonstrators such as 'We ain't leaving for no one,' and 'We can take 'em,' and 'There ain't enough of them to stop us.' This officer testified that he feared at any moment there might be an attempt by these many demonstrators to overrun and overpower the small force of police officers present.

"Mr. James T. Erwin, news director of a local radio station, and Mr. Albert Tonguis, photographer for a local television station, both testified that in their opinion the situation was extremely tense, and they feared an outbreak of violence at any moment. One of these witnesses stated that the situation was 'as electric a situation as I have ever seen.'

"During the Third Street demonstration, following the demonstration at the Courthouse, two large department stores, Kress and McCrory, located on Third Street, found it advisable to close their doors because of the fear of being overrun by demonstrators. Around 8:00 o'clock or 9:00 o'clock that same night, a meeting was held by members of CORE in Scotlandville. A Negro spokesman addressed the crowd at that time and stated 'They are dealing with the new Negro. We don't tell you what to do, we do it with you. How many of you are going back downtown with us tomorrow?' Since it seemed apparent that these demonstrations would continue and would be repeated the following day, with all of the attendant possibility of an outbreak of violence, the plaintiffs requested this Court to issue a temporary restraining order, which was issued on December 15, 1961, and renewed on December 22, 1961, followed by the issuance of a preliminary injunction on January 5, 1962, as hereinbefore set forth.

"During the trial of this matter, all of the witnesses admitted that during the entire course of these demonstrations, none of the 2,000 demonstrators, to their knowledge, were guilty of any acts of violence. They also emphasized the fact that the Rev. B. Elton Cox, on several occasions, advised the crowd of demonstrators against the use of violence. No witness saw any actual acts of violence such as street fights, etc., but every single witness, without exception, described the situation as 'explosive.'

"From all of this evidence, which was completely uncontradicted, this Court comes to the inescapable conclusion that: (1) the defendant, CORE, through its agents, officers, representatives, and others acting in concert with it, was directly responsible for and in complete charge of the 'protest march' from Scotlandville, Louisiana, to Baton Rouge, Louisiana, on December 15, 1962, culminating in the huge demonstration of some 2,000 people in the vicin-

> ity of the Courthouse in downtown Baton Rouge, and the subsequent demonstrations in the business area on Third Street in downtown Baton Rouge; (2) that the leader, identified as Rev. B. Elton Cox, was an officer and representative of CORE, and was in complete charge and control of the demonstrators, who were willing to, and did, obey his every command, even though it entailed and necessitated their violating the law or refusing to obey the orders or instruction eminating from lawfully constituted officials such as the Chief of Police for the City of Baton Rouge, the Sheriff of the Parish of East Baton Rouge, and the Mayor-President of the City of Baton Rouge and Parish of East Baton Rouge; (3) that even though the demonstrators themselves were apparently guilty of no acts of physical violence, it was the considered opinion of the Chief of Police, the Sheriff, and the Mayor-President, and all others who testified that there was a clear and present danger of violence and of a breakdown of governmental authority, and the orderly administration of governmental affairs as a direct result of the manner in which the congregation and demonstration of the estimated 2,000 persons involved was conducted under the apparent leadership of B. Elton Cox; (4) that the Chief of Police, the Sheriff, and the Mayor-President were entirely justified in concluding that the situation on December 15, 1961, was so fraught with impending danger as to require them to take the necessary steps, including the use of tear gas, to immediately disperse the crowd of demonstrators and to bring the mass demonstration to an immediate end."

As pointed out by the District Judge, Title II, Section 210, of the Baton Rouge City Code, provides that no "procession or parade *** shall occupy, march, or proceed along any street except in accordance with a permit issued by the Chief of Police and such other regulations as are set forth herein which may apply," yet no such permit was secured.

In fact, no representative of the defendant organization even sought such a permit for either the movement of the demonstrators from Scotlandville to downtown Baton Rouge or the mass demonstration which took place in downtown Baton Rouge. As a matter of fact, no member of the defendant organization ever contacted any of the police authorities to advise them of the defendants' plans. It was not until some several thousand persons, either belonging to the defendant organization or participating with it in its planned demonstration, were actually in the downtown area that the police authorities were informed as to the purpose and direction of this mass meeting. In the process of carrying out their planned "protest," these demonstrators not only denied other persons their equal rights under the law, and their right to equal protection of the law, but they also actively and affirmatively interfered with and hindered the duly constituted authorities of the State of Louisiana in their efforts to provide to all persons equal protection of the law, guaranteed to them by the State and Federal Constitutions. The excuse given by counsel for the appellants for this unlawful and unconscionable activity was that these demonstrators had a "right" to free speech and assembly, the exercise of which could not be denied them, except under circumstances where the demonstrators were being actually exhorted to violence or had perpetrated violence.

The purpose of an act, no matter how laudable, is no excuse for a violation of the law. Further, as we shall hereafter demonstrate, the jurisprudence is clearly to the effect that "the authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties, but rather as one of the means of safeguarding the good order upon which they ultimately depend." For this reason, as so eloquently stated by the United States Supreme Court in the case of *Cox v. State of New Hampshire,* 312 U.S. 569, 85 L.Ed. 1049, 61 S.Ct. 762, 133 A.L.R. 1396:

> "The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways is in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protestion. **One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinion."** (Emphasis ours.)

ARGUMENT

I.

THE PRINCIPLES OF THE FIRST AND FOURTEENTH AMENDMENTS TO THE CONSTITUTION ARE NOT ABSOLUTE; THEY ARE THE SUBJECT OF REASONABLE REGULATION

Whatever rights appellants have to speak out against, and to assemble with others for the purpose of "attempting to end discriminatory practices," they are not "constitutionally protected" against reasonable regulation and restraint. As pointed out by Judge West in the opinion below, "these rights are subject to the elemental need for order, without which the guarantees of civil rights would be a mockery."

In *Tribune Review Publishing Co. v. Thomas,* 153 F. Supp. 486, it was contended that a rule of Court prohibiting the taking of photographs during Court sessions abridged the constitutional guarantees of free speech and press. Even though the Court found "freedom of the press" to be the "keystone of free democracy," it recognized that "no man, however, would succumb to the fatal belief that such freedom is absolute and unlimited.[11]

In *Poulos v. State of New Hampshire,* 345 U.S. 395, 97 L.Ed. 1105, 73 S.Ct. 760, appellant contended he was entitled to hold religious services in a public park without having first secured the requisite permit. Justice Reed, as the organ of the Court, stated the principle thus:

> "The principles of the First Amendment are not to be treated as a promise that everyone with opinions or beliefs to express may gather around him at any public place and at any time a group for discussion or instruction. It is a nonsequitur to say that First Amendment rights may not be regulated because they hold a preferred position in the hierarchy of constitutional guarantees of the incidents of freedom. This Court has never so held and indeed has definitely indicated the contrary."

arrest not injunction

In *Feiner v. People of State of New York,* 71 S.Ct. 303, petitioner claimed his conviction for disorderly conduct violated his right to free speech under the First Amendment. Prior to the time of his arrest, petitioner had been engaged in making a speech, and was arrested after he refused to obey police requests that he "get down" and "cease talking." These requests were made because of police concern "with the effect of the crowd on both pedestrian and vehicular traffic" and the "feeling in the crowd both for and against the speaker" which the officers felt might lead to violence.

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[11] 153 F. Supp. page 493.

The Court held the arrest proper, stating:

> "It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace."

In *Schneider v. Irvington*, 308 U.S. 146, 84 L.Ed. 155, ordinances regulating the use of streets for the distribution of circulars was before the Court.

In commenting upon the rights of municipal authorities, the Court stated:

> "Municipal authorities, as trustees for the public, have the duty to keep their communities' streets open and available for movement of people and property, the primary purpose to which the streets are dedicated. So long as legislation to this end does not abridge the constitutional liberty of one rightfully upon the street to impart information through speech or the distribution of literature, it may lawfully regulate the conduct of those using the streets. For example, a person could not exercise this liberty by taking his stand in the middle of a crowded street, contrary to traffic regulations, and maintain his position to the stoppage of all traffic; a group of distributors could not insist upon a constitutional right to form a cordon across the street and to allow no pedestrian to pass who did not accept a tendered leaflet; nor does the guarantee of freedom of speech or of the press deprive a municipality of power to enact regulations against throwing literature broadcast in the streets. Prohibition

of such conduct would not abridge the constitutional liberty since such activity bears no necessary relationship to the freedom to speak, write, print or distribute information or opinion."

These basic principles, and the jurisprudence upon which they stand, were restated in *United States v. U. S. Klans, Knights of Ku Klux Klan, Inc.*, 194 F. Supp. 897. There it was correctly observed:

> "* * * the right of the public to be protected from evils of conduct, even though the constitutional rights of certain persons or groups are thereby in some manner infringed, has received frequent and consistent recognition by the courts of the United States. As the Supreme Court said in American Communications Ass'n v. Douds, supra:
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> > " '* * * We have noted that the blaring sound truck invades the privacy of the home and may drown out others who wish to be heard. Kovacs v. Cooper, 336 U.S. 77 (69 S.Ct. 448, 93 L.Ed. 513) (1949). The unauthorized parade through city streets by a religious or political group disrupts traffic and may prevent the discharge of the most essential obligations of local government. Cox v. (State of) New Hampshire, 312 U.S. 569, 574 (61 S.Ct. 762, 85 L.Ed. 1049) (1941). The exercise of particular First Amendment rights may fly in the face of the public interest in the health of children, Prince v. (Commonwealth of) Massachusetts, 321 U.S. 158 (64 S.Ct. 438, 88 L.Ed. 645) (1944), or of the whole community, Jacobson v. (Commonwealth of) Massachusetts, 197 U.S. 11 (25 S.Ct. 358, 49 L.Ed. 643) (1905), and it may be offensive to the moral standards of the community, Reynolds v. United States, 98 U.S. 145 (25 L.Ed. 244) (1878); Davis v. Beason, 133 U.S. 333 (10 S.Ct. 299, 33 L.Ed. 637) (1890).' "

It follows, therefore, that appellants do not have the **absolute** right to go upon the public streets and to there assemble at any time, at any place, and in any manner they choose. Their rights in this regard are subject to reasonable restraint, as they must be and for the very reasons stated by the Supreme Court of the United States in *Cox v. New Hampshire*, supra:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses."

The cited case is annotated at 133 A.L.R. 1402. The annotation is replete with citations from throughout the United States to the effect that state and local governing authorities must have the right to control and regulate the use of the public streets, highways and sidewalks if a peaceful and orderly society is to be preserved and that such right, reasonably administered, does not violate other constitutional guarantees. So it is here. We do not contend that these defendants may not espouse any cause in which they were interested; we do not contend that they may not have meetings for this purpose; we do not contend that they may not distribute pamphlets and circulars designed to promote their cause; we do contend, however, that they may not do so in such a manner as will violate the laws of the State of Louisiana and of the United States, in such a manner as will prevent and interfere with the duly constituted authorities in providing all persons equal protection of the law, and in such a manner as to completely disregard, disrupt and disorganize, public and private activities of the City of Baton Rouge.

[illegible]

To the same effect is *Kovacs v. Cooper*, 336 U.S. 77, 93 L.Ed. 513, 10 A.L.R. 2nd 608, holding:

> "Of course, even the fundamental rights of the Bill of Rights are not absolute. The Saia case recognized that in this field by stating 'the hours and place of public discussion can be controlled.' It was said decades ago, in an opinion of this court delivered by Mr. Justice Holmes in Schenck v. United States, 249 US 47, 52, 63 L.Ed. 470, 473, 39 S.Ct. 247, that: 'the most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. **It does not even protect a man from an injunction against uttering words that may have all the effect of force. Hecklers may be expelled from assemblies and religious worship may not be disturbed by those anxious to preach a doctrine of atheism.** The right to speak ones mind would often be an empty privilege in a place and at a time beyond the protecting hand of the guardian of public order.' " (Emphasis added)

Freedom of speech, therefore, does not require that the City of Baton Rouge submit to a mob of two thousand people, the very mass of which will block traffic on its main thoroughfares, including a federal highway; completely block the pedestrian passage way of a street in the busiest part of town; incite prisoners in its jail to loud, boisterous and unruly conduct; and disrupt the business establishments of other citizens by blocking the aisles and thus causing some of these establishments to close. We sincerely submit that no decision of any Court of the United States has ever required a community to passively submit to such conduct by any group of citizens regardless of race, color or creed.

To the contrary, we believe that the Courts recognize and respect the right of a municipality to protect peace and good order. See *Feiner v. People*, supra, holding thus:

> "This Court respects, as it must, the interest of the community in maintaining peace and order on its streets."

It is respectfully submitted, therefore, that the actions of the appellants which were enjoined by the District Court were not "rights created or protected by the Federal Constitution." To the contrary, the actions of the appellants, from which injunctive relief is sought, constituted an abuse of "rights created or protected by the Federal Constitution." The injunction issued as a consequence of appellants' unlawful activities merely recognized the stated authority of the municipality to maintain peace and good order on its streets. In this regard, the judgment of the District Court is in accord with the jurisprudence enunciated in the cases hereinabove cited.

II.

INJUNCTION WAS A PROPER REMEDY; THE ONE ISSUED IN THESE PROCEEDINGS WAS WITHIN THE JURISDICTION OF THE DISTRICT COURT AND VIOLATES NO CONSTITUTIONAL GUARANTEES

The general rule is that injunctive relief may be sought under the circumstances here presented; plaintiffs are not relegated to the process of arrest to prevent appellants' unlawful activities. Because in cases such as this remedy by criminal prosecution may be inadequate, it is recognized that the Courts will not hesitate to use their equity jurisdiction "where relief is necessary to protect the rights of the public or of private individuals." 28 Am. Jur. "Injunctions," Section 157.

As properly pointed out by the District Court, the "fallacy" in appellants' argument that arrest is an adequate remedy is demonstrated by the fact "that it was the arrest of twenty-three Negroes for allegedly violating the statutes in question that was the precipitating cause of the demonstrations complained of." For this reason, "additional arrests could be reasonably calculated to have created additional causes for demonstrtion."

In further support of plaintiffs' right to seek injunctive relief, *American Jurisprudence* states thus:

> "The state is intrusted with the duty of protecting the public against criminal acts injurious to the civil or property rights or privileges of the public or the public health. Ordinarily recourse is had to its criminal courts for such purpose. Yet there may be cases where the remedy at law by criminal prosecution and punishment would not be adequate under the circumstances, and where the remedy in equity by injunction would furnish more effectual and complete relief. In such cases, according to the weight of authority, when the interests of the state or other political division or the interests of those entitled to its protection are thus affected by criminal acts or practices, the state, acting through its governmental agencies, may invoke the jurisdiction of equity to have them restrained. And, while there are considerable differences of opinion, and variations in the statement of rules, as to when the state or a governmental agency may thus invoke the jurisdiction of equity to restrain acts which amount to crimes, for the most part present-day cases reflect a very liberal attitude on the part of the courts in

entertaining jurisdiction at the instance of the state, to enjoin such acts." 28 Am. Jur. Sec. 160.

There can be little question here that the rights, interests and liberties of the citizens of the Parish of East Baton Rouge were and will be adversely affected by the activities of the defendant organization and those acting in concert with it. Not only did these defendants interfere with the duly constituted authorities in their effort to afford all persons equal protection of the law, but they were clearly engaged in unlawful activity having a direct bearing upon the rights, interest and liberties of the citizens of the Parish. For example, they were clearly in violation of L.R.S. 14:97, making "simple obstruction of a highway" a crime. This Louisiana statute provides in part, as follows:

> "Simple obstruction of a highway of commerce is the intentional * * * performance of any act on any * * * highway * * * which will render movement thereon more difficult."

As pointed out by those who testified, because of the activities of the mass demonstrators, traffic was "snarled" in the Scotlandville area. According to the testimony of Captain Henderson, these demonstrators at one point completely occupied two entire blocks of the highway, from shoulder to shoulder.[12] It was further obstructed and interfered with all along the line of the march from Scotlandville to downtown Baton Rouge, and in the downtown Baton Rouge area it was completely disrupted.

The demonstrators further violated the provisions of L.R.S. 14:100.1 making it a crime for any person to "willfully obstruct the free, convenient and normal use of any public sidewalk, street, highway * * * or other passage way * * * by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein."

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[12] Tr. P. 61.

The testimony eloquently demonstrates the fact that these defendants, and others acting in concert with them, willfully, and with complete disregard of the rights of others, obstructed the streets and the sidewalks of the City of Baton Rouge. The Court can take judicial notice of the fact that it would have been foolhardy for any person to attempt to use the areas where the mass demonstrators had collected, and those who testified stated that they could not have utilized these public facilities without having an encounter with one or more of the demonstrators.

The demonstrators were clearly in violation of L.R.S. 14:-103.1, the Louisiana statute prohibiting the crowding or congregating with others on "a public street or public highway, or upon a public sidewalk" and making the failure or refusal to disperse a disturbance of the peace and punishable by fine and imprisonment. These demonstrators not only prevented other citizens and persons from using the streets and sidewalks freely and in the normal, customary manner, but they physically blocked means of access to residences and offices in the Court House area to such an extent that persons were unable to reach their homes and offices, and those occupying the residences in the area were unable to even have the benefit of medical care during the time the demonstrations were in effect.[13]

As pointed out in the opinion below, "there can be no question but that injunctive relief may be had even though the acts complained of were violations of criminal statutes." *Milliken v. Stone*, 7 F. 2d 397; *International Union of Mine, Mill and Smelter Workers v. Tennessee Copper Co.*, 31 F. Supp. 1015; 43 C.J.S. Injunctions, Section 152, page 764. And there can be no doubt here but that these were "violations of criminal statutes" occurring during and as a result of appellants' demonstrations—violations, which, if permitted to continue, were bound to result in violence and public disorder. Under these circumstances, injunctive relief was not only proper, but essential to the preservation of good order.

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[13] Tr. p. 304, 305.

But even if this was not the law, it has long been held that the federal courts have jurisdiction of and the right to grant injunctive relief in those civil actions involving violations of 42 U.S.C.A. Section 1985(3). In the case of *Brewer v. Hoxie School District No. 46*, 238 F.2d 91, the precise issue was before the Court, the appellants contending that injunctive relief could not be granted under this particular federal statute because the specific grant contained in that statute "is of a right of action for recovery of damages occasioned by acts done in furtherance of such conspiracy."

The United States Court of Appeals, Eighth Circuit, in a carefully considered opinion, held that the trial judge "was not in error in recognizing the quoted section as affording additional support to the federal jurisdiction and the issuance of the injunction" against the defendants. The Court cited multiple cases "in support of the conclusion that the statute affords a standard to federal equity courts in respect to such conduct and a sufficient basis upon which the court should enjoin a conspiracy made actionable" by 42 U.S.C.A. 1985(3).

The District Court here concluded that appellants "were in violation of the provisions of Title 42, U.S.C.A., Section 1985(3)" and the plaintiff public officials were thus entitled to injunctive relief in the same manner and to the same extent as the school authorities in the *Brewer* case. In commenting on the analogy between the two cases, the District Judge stated:

> "The duty of the school board in the Brewer case was, in the opinion of this Court, no greater than was the duty of the plaintiffs in the instant case to make certain that they were, at all times, in a position to uphold the laws of the State, city and Parish, and to protect the community against interference with their constitutionally guaranteed rights. The provisions of 42 U.S.C.A. Section 1985 (3) very clearly makes it a violation of federal law for two or more persons to act in concert for the purpose of depriving, either directly or indirectly, any person or class of persons, of the equal protection of the laws and the equal privileges and immunities under the law. Certainly this statute must be given equal application to all persons who are found to be in violation hereof. The fact that the demonstrators in the instant case did, in fact, deprive other citizens of the City of Baton Rouge and Parish of East Baton Rouge of equal protection of the law and did, in fact, prevent and hinder the constituted authorities of the State of Louisiana and of the Parish of East Baton Rouge and of the City of Baton Rouge from giving or securing to all persons within the city and Parish the equal protection of the laws, constituted a violation of Title 42, U.S.C.A. Sec. 1985(3), the future violations of which should certainly be enjoined."

Where constitutional rights are involved, "the jurisdiction of the Federal Courts * * * is so well established that no

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one may question it." *Kasper v. Brittian*, 245 F.2d 92, *Brewer v. Hoxie School District*, supra.

Having jurisdiction, the District Court had full authority to render such judgment as it deemed appropriate to resolve the issues and restore public peace. See *United States v. U.S. Klans, Knights of the Ku Klux Klan, Inc.*, supra, holding:

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> "It is well settled that a district court of the United States, sitting as a court of equity, has inherent power to grant complete relief in the matter before it in controversy. As the Supreme Court of the United States said in Porter v. Warner Holding Co., 328 U.S. 395, 66 S.Ct. 1086, 1089, 90 L.Ed. 1332:
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> > " 'Unless otherwise provided by statute, all the inherent equitable powers of the District Court are available for the proper and complete exercise of that jurisdiction.'
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> **"The Court further said that if the public interest is involved in a proceeding those equitable powers assume an even broader and more flexible character than when only a private controversy is at stake.** As the Court went on to say:
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> > " 'Power is thereby resident in the District Court, in exercising this jurisdiction, "to do equity and to mould each decree to the necessities of the particular case." Hecht Co. v. Bowles, 321 U.S. 321, 329 (64 S.Ct. 587, 88 L.Ed. 754). * * *" (Emphasis supplied)

And the fact that the judgment of the Court and the injunction issued restricted appellants right to speak does not violate the Federal Constitution, for as stated in *Kasper v. Brittain*, supra:

> "The right to speak is not absolute and may be regulated to accomplish other legitimate objectives of government. The First Amendment does not confer the right to persuade others to violate the law. Giboney v. Empire Storage Company, 336 U.S. 490, 502, 69 S.Ct. 684, 93 L.Ed. 834. The speech here enjoined was clearly calculated to cause a violation of law and speech of that character is not within the protection of the First Amendment, Dennis v. United States, 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed. 1137; Feiner v. People of State of New York, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 267; Beauharnais v. People of State of Illinois, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 919; Chaplinsky v. State of New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 86 L.Ed. 1031.

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> "Appellant had urged the crowd to disregard the orders of the court and to continue pressure upon the school officials until Negroes were eliminated from the Clinton High School.
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> "This clearly, was not a mere exposition of ideas. It was advocacy of immediate action to accomplish an illegal result, sought to be avoided by the restraining order. The clear and present danger test, as applied by Judge Learned Hand, and adopted by the Supreme Court in the Dennis case, is here met by the mob violence that followed the urgings of the appellant. Danger that calls for the presence of the State Patrol and the National Guard, with the use of bayonets and tear gas, is, we think, within the narrowest limits of the concept and cries aloud for such court action as was here taken."

If the actions of the appellant in *Kasper v. Brittain* met the "clear and present danger test," it is respectfully submitted that the actions of CORE and its 2,000 demonstrators meets that same test. If the actions of Kasper in *Kasper v. Brittain* was such as to cry "aloud for such court action" as was taken there by virtue of the fact that the State Patrol and the National Guard, as well as tear gas, were required, then so must the actions of CORE and its 2,000 demonstrators cry "aloud" for court action here.

To the same effect, see *Bullock v. United States*, 265 F.2d 683, holding: - criminal contempt

> "Various constitutional questions are raised by appellant Kasper which require little discussion. Kasper claims that the injunction issued by the District Court violates the free speech provision of the First Amendment to the Constitution. As held in Kasper v. Brittain, supra, the right to speak is not absolute. The First Amendment does not confer the right to persuade others to violate the law, Giboney v. Empire Storage & Ice Co., 336 U.S. 490, 502, 69 S.Ct. 684, 93 L.Ed. 834."

If the First Amendment "does not confer the right to persuade others to violate the law," then appellants' claim to constitutional protection for their actions must obviously fall. Every step they took, every action and demonstration they sponsored, and every proposal made by appellants was an attempt to persuade others to violate the law. It is not enough to say that the orderly process of testing the validity of laws is too long, too time consuming, or too difficult and expensive and, therefore, more drastic measures are required. The simple answer to this illogical excuse is that given by Justice Reed in *Poulos v. State*, supra:

> "Delay is unfortunate but the expense and annoyance of litigation is a price citizens must pay for life in an orderly society where the rights of the First Amendment have a real and abiding meaning. Nor can we say that a state's requirement that redress must be sought through appropriate judicial procedure violates due process."

III.

INJUNCTIVE ORDERS MAY BE AS BROAD AS MAY BE REQUIRED TO SECURE THE RELIEF SOUGHT

Appellants assert under point III of their brief that the injunction issued by the District Court "is so vague and sweeping that it is unconstitutional." Opposing Counsel argue that the language of an injunction is subject to the same standards of certainty applicable to statutes. They indicate that any injunctive order which does not meet such standard must be stricken down as "unconstitutional."

Such argument is, to say the least, novel. If appellants feel that the scope of the injunction issued is broader than necessary to secure the peace and order of the community, their remedy is to ask that this court modify the decree issued by the District Court.

The federal appellate courts have never been hesitant to exercise the power of modification on review. (See *Sun Publishing Co. v. Walling*, 140 F.2d 445 (1944), certiorari denied, 322 U.S. 728, where the Circuit Court of Appeals found that an injunction issued by the District Court against a newspaper infringed upon constitutional immunities, the appellate court modified the injunction. To the same effect see *Cook Chemical Co. v. Cook Paint and Varnish Co.*, 185 F.2d 365. See also *N.L.R.B. v. Express Co.*, 312 U.S. 426, where the Supreme Court itself modified an injunction which had been affirmed by the Circuit.)

The District Court itself has power to modify the injunction when changed conditions justify such action. *U. S. v.*

Swift & Co., 386 U.S. 106. Or the District Court may issue such ancillary orders as may be necessary to clarify the injunction to make it effective. *Lester v. Parker*, 235 F.2d 787.

In view of the fact that this injunction has been in force since February 2, 1962, and appellants neither sought clarification in the District Court, nor asked for modification or clarification here, we assume that they do not desire it.

Brief comment should be made concerning the cases cited by appellants under this argument. In *Thompson v. City of Louisville*, 362 U.S. 199, cited on page 14 of appellants' brief, the defendant was convicted in the Police Court of Louisville, Kentucky, of loitering and disorderly conduct. The Supreme Court held that the record showed no evidence of guilt and that it is a violation of due process to convict a man without evidence of his guilt. We fail to see the relevance of that rule to the question of the scope of the injunction.

Chaplinsky v. New Hampshire, 315 U.S. 568, also cited on page 14, involved an attack on a statute prohibiting the addressing of any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, or calling him by any offensive or derisive name. The defendant, a member of the Jehovah's Witness sect, attacked the statute as a violation of freedom of speech. The Supreme Court sustained the statute as a constitutional exercise of state police power. We do not believe that case is of any help in determining the scope of injunctive relief which should be granted the plaintiffs here.

Winters v. People of the State of New York, 333 U.S. 507, also cited on page 14, involved an attack upon a statute prohibiting distribution of magazines principally made up of criminal news or stories or deeds of bloodshed or lust under certain conditions. The statute was declared invalid as too uncertain and indefinite. We are at a loss as to how this case might relate to the injunctive relief granted by the Court below.

The other cases cited by appellants, *Herndon v. Lowry*, 301 U.S. 242 (p. 14), and *Yick Wo v. Hopkins*, 118 U.S. 356 (p. 15), clearly deal with the constitutionality of legislative enactments and have no bearing upon the question before the Court.

When necessary a court of equity may grant injunctive relief in broad terms. *May Dept. Stores Co. v. N.L.R.B.*, 326 U.S. 376.

In *Interstate Commerce Commission v. Keeshin Motor Express Co.*, 134 F.2d 228, the Court stated:

> "* * * while it is well established the courts may not issue a blanket order enjoining any violation of a statute upon a showing that the Act has been violated in some particular respects, nevertheless, they do possess authority to restrain violations similar to those already committed. * * *
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> "To the same effect is the language of the Supreme Court in National Labor Relations Board v. Express Co., 312 U.S. 426 (437), 61 S.Ct. 693, 700, 85 L.Ed. 930:
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> > " '* * * We hold only that the * * * Act does not give the Board an authority, which courts cannot rightfully exercise, to enjoin violation of all the provisions of the statutes merely because the violation of one has been found. To justify an order restraining other

> violations it must appear that they bear some resemblance to that which the employer has committed or that danger of their commission in the future is to be anticipated from the course of his conduct in the past.' " (134 F.2d 228, 231)

The injunction issued by the District Court restrains only unlawful conduct which had been committed by defendants in the past and which, the record amply demonstrates, they fully intended to pursue in the future. It is noted that, although defendants in their answer alleged that the statutes involved were unconstutionally applied to them, no mention is made of that attack before this Court. Presumably they have abandoned that allegation and admit that the statutes were constitutionally applied to their activities.

The decree issued by the Court below restrains defendants from:

> (1) "financing, sponsoring, encouraging, or engaging in meetings or any other activities whereby **violations of existing State or Federal laws** are suggested, advocated, or encouraged; * * *"

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The record is replete with evidence that defendants have financed, sponsored and encouraged meetings where violations of such laws were deliberately planned and advocated. Mass violations of law resulted from such meetings. Should not such criminal conspiracies be enjoined?

> (2) "financing, sponsoring, encouraging, or engaging in meetings whereby the public ways, streets, sidewalks or highways, of the City of Baton Rouge, or the Parish of East Baton Rouge, are blocked, or the unimpaired use thereof denied to other traffic; * * *"

traffic

The record graphically depicts the mass of people who at defendants' urging literally took over the City of Baton Rouge on December 15, 1961. The record also shows that the only thing which stopped subsequent take overs, on perhaps an even larger scale, was the temporary restraining order issued by the District Court. Are not the other residents of our community entitled to go peaceably about their business upon the public ways free from interference by defendants?

> (3) "financing, sponsoring, encouraging or engaging in meetings or any other activities wherein or whereby disobedience to the lawful orders of properly constituted law enforcing agencies and their personnel is advocated, suggested or encouraged; * * *"

The record shows that the mob which descended upon Baton Rouge on December 15, 1961, completely ignored the order of local law officers—they took their commands exclusively from representatives of the defendants. That part of the injunction simply requires conduct expected of every law abiding person. If the orderly process of government is to continue, then lawful orders of law enforcement officials must be obeyed. Orderly procedures are provided under the Constitution to determine whether any particular order is lawful. Those procedures do not include mass violations of orders.

> (4) "financing, sponsoring, encouraging, or engaging in meetings or any other activities designed or held for the purpose of impeding or obstructing the administration of justice or the orderly functions of government; * * *"

We still do not know whether these people, if left to their own devices, would have attempted to free the prisoners whose incarceration they were allegedly protesting. Such demonstrations are, in any event, designed, by their very mass, to intimidate local public officials and to unlawfully influence the outcome of criminal trials. The guilt or innocence of persons accused of crime, and the validity of the laws under which they are accused are to be determined by the "orderly function of government" not by mob action in the streets. Are not State and local officials entitled to the protection of the federal courts in the discharge of their sworn duties?

> (5) "financing, sponsoring, or encouraging, or engaging in any activities designed to, or which do, impede, hinder, or obstruct officers of the law, or officials of the Parish of East Baton Rouge, or the City of Baton Rouge, from performing and discharging the duties of their respective offices."

Here again, the District Court has simply required that defendants accede to a standard of conduct required of all other persons. Are these defendants in such a privileged class that they may ignore those duties of citizenship expected of all others?

We submit that the scope of the injunction is no broader than absolutely necessary to secure the peace and domestic tranquility of our community. It imposes no unreasonable or unnecessary burden upon defendants' activities—it merely requires that they espouse their cause in a peaceful, orderly manner and that they refrain from violations of State or Federal laws while doing so. It does not require that they stop criticizing whatever it is that they desire to criticize, but it does require that such criticism be conducted under circumstances that will permit others equal opportunity to make use of the public way.

No person or group can be permitted to decide which laws or which lawful orders will be obeyed or complied with. Laws change, customs change, people's attitudes change, but, in the United States, one thing does not change—all changes take place by orderly process of government—not by mob rule.

"The First Amendment does not confer the right to persuade others to violate the law."

CONCLUSION

As heretofore pointed out, this is not an instance where public officials have oppressed anyone, or violated any civil rights of any individual person or group. To the contrary, the public officials in this case clearly did everything they could to protect both persons and rights. In face of law violations of a magnitude unknown in this community, these officials showed remarkable restraint. That they did so is evidenced by the fact that this mass of demonstrators, illegally marching on the streets and sidewalks, denying others of their equal right to use these public facilities, moved all the way from the Southern University campus north of Baton Rouge to the Courthouse under police guard, solely because of which there was no violence or bloodshed.[14]

Counsel for appellants has made much point of the fact that no violence occurred. The very reason it did not occur is a tribute to the presence of mind of those police authorities in charge of the situation. Obviously, it is not necessary for violence to occur before equity may intervene to prevent it.

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[14] Captain Henderson testified that on one occasion the path of the marchers was obstructed by four or five white persons. Even though they had as much right as the marchers to be on the sidewalk, they were removed by deputies to prevent a threatened outbreak of violence. Tr. page 65, 66.

Non-violence in itself can lead to violence, and the fact that one professes non-violence does not give him a right to create a situation which could lead to violence. That a continuation of these demonstrations will lead to violence is eloquently testified to by the statements of Ronnie Moore, a representative of the defendant organization, who, in answer to the pleas of the Sheriff that these matters be properly conducted in the Court, stated that "no war was won without bloodshed." In the oral argument of counsel for appellants at the conclusion of this case in the Court below, they implied that drastic action was required to win what they conceived to be their proper rights. They suggested that "revolutions are not won by cowards" and that bloodshed perhaps was necessary to bring proper focus on their demands.

We sincerely dispute these contentions by counsel for the defendants. We do not believe that violence and bloodshed have any place in any organized civilized society today; nor do we believe that persons in the exercise of free speech and free assembly must be permitted by the public authorities to go unrestrained, or may exercise their rights to an extent where others are antagonized and agitated to violent action. The holdings of the Supreme Court in the case of *Cox v. New Hampshire*, supra, constitutes eloquent testimony that even the Supreme Court of the United States does not consider that civil liberties are absolute or that they override all other rights or interest of society as a whole.

The defendant organization, its agents and those who act in concert with it, contend, in essence, that the end which they seek justifies the means which they have used. It demands certain rights and privileges without being willing to accept the responsibility that goes with such privileges. It ignores the responsibility which every citizen has and owes to his community and to society generally.

The conduct and attitude of these defendants remind one of the conduct of the strikers in the "sit down strike" cases of the late 1930s, which conduct was quickly declared unlawful by the Federal Courts, including the United States Supreme Court. In this regard, we believe that the language of Federal District Judge Coleman in *The Oakmar*, 20 F. Supp. 650 (1937), which case was cited with approval by the United States Supreme Court in the case of *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U.S. 240, 59 S.Ct. 490, is particularly appropriate to the present case. After discussing the conduct of the strikers in seizing the ship and refusing to give up possession in order to obtain the higher wages which they desired, the Court made the following comment from which we would quote:

> "* * * But these men say in the present case, in effect, that 'our status of having been employees upon the property of another puts us in a preferred class, entitles us to an interest in such property, which we can appropriate, or at least hold as security, as its were, for the more complete guarantee, or the fruition, of those rights which are fundamentally ours under the law.' But the mere statement of such a theory is its own and best refutation. **It is but another and less shocking way of saying, 'If the law does not give us what we want, we will make the law over.'** Such theories are the handmaid of crime and anarchy. **They emanate from those persons who lack that self-control which enables men to abide the slower processes of orderly government instead of yielding to that impatience which, if not restrained, will ultimately destroy the fundamental rules for human freedom upon which our form of government is based."**

We respectfully submit that society generally, and this community in particular, is entitled to protection from the actions of people who say **"if the law does not give us what we want, we will make over the law,"**—to protection from those agitators **"who lack that self control which enables men to abide the slower processes of orderly government * * *."**

In the final analysis, if persons or groups of persons, acting in concert, can take over the streets and sidewalks of a municipality merely because they believe some right has been violated or someone illegally arrested, then we have now reached the period in this country where special groups can destroy the public peace, the judicial and democratic systems as we know them, without recourse on the part of those constitutionally invested with authority and responsibility to preserve the public peace, and those judicial and democratic processes.

The suggestion in appellants' brief that the City of Baton Rouge "permitted" the demonstration of December 15, 1961, simply because the Chief of Police told Cox he could move to the Courthouse for the avowed purpose of singing several hymns and then dispersing is similar to saying that a person with a gun in his back "permits" a robbery. Faced with 2,000 demonstrators, whose intent and purpose was unknown, but who were led by an organization the purpose of which was and had been that of violating local laws and of encouraging others to do likewise, the Chief of Police had little choice in the decision he made. The fact that Cox violated his word, based on which the decision was made, suggests in itself that any other decision by the Chief of Police would have resulted in Cox attempting to "march" on the Courthouse even against the efforts of the Police to prevent it. The tragic consequences of this should be obvious.

It is true that the City of Baton Rouge permits parades, but its ordinance provides a method and procedure by which they are to be held in order that the public authorities may be informed of these events and have an opportunity to properly direct and handle them. But no community, here or in any other section of the country, can permit special groups to take the law in their own hands, defy the law enforcement personnel and create a situation which can lead to violence and bloodshed, and stand idly by when they determine to do so.

Neither can any community control such situations by arrest alone. To some extent, arrest—multiple arrests—in this situation would have only inflamed the demonstrators, and even greatly increased the chances of violence and bloodshed. In such cases, on proper showing, injunctive relief is not only a proper remedy, but the only remedy. Appropriately, the law recognizes the right of public officials to seek injunctive relief where the rights, interests and liberties of the public generally are being violated by the perpetration of unlawful acts.

For these reasons, we believe the judgment of the District Court and the injunction issued pursuant to it to be proper. The judgment should be here affirmed.

Respectfully submitted,

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CERTIFICATE

I, of counsel for appellees, do hereby certify that of the above and foregoing brief has this day been ma all Counsel of Record for the defendants, by placing s the United States mail, postage prepaid.

Baton Rouge, Louisiana, this 21st day of September,

R. Gordon Kean, Jr.

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CONGRESS OF RACIA
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BRYAN CLEMMONS,
CHRISTIAN, the latte
President of the City

APPEAL FROM UNI
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Sheldon Engelhard,
Charles Oldham,
of Counsel.

es Court of Appeals

the Fifth Circuit

No. 19703

IAL EQUALITY, JOHN DOE and
MARY DOE,

Appellants,

against

, WINGATE WHITE and JOHN
ter in his official capacity as Mayor-
of Baton Rouge, Louisiana,

Appellees.

NITED STATES DISTRICT COURT
ERN DISTRICT OF LOUISIANA

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TABLE OF CONTENTS

PAGE

STATEMENT 1

ABSTRACT OF FACTS 2

STATEMENT OF THE CASE 6

EXCEPTIONS TO THE FINDINGS IN THE DISTRICT COURT 7

ARGUMENT

POINT I—The injunction was issued in violation of the First and Fourteenth Amendments of the Constitution 9

POINT II—The injunction violates the privileges and immunities of the appellants and constitutes an illegal prior restraint on members of the Congress of Racial Equality 12

POINT III—The injunction in any event is so vague and sweeping that it is unconstitutional 13

CONCLUSION 16

CASES CITED

Buchanan v. Warley, 245 U. S. 60, 81 (1917) 11

Cantwell v. Connecticut, 310 U. S. 296, 308 (1940) 10

Chaplinsky v. New Hampshire, 315 U. S. 568 (1942) 14

Cooper v. Aaron, 358 U. S. 1 (1958) 11

Garner v. Louisiana, 368 U. S. 157 (1961) 2, 11, 13

Hague v. CIO, 307 U. S. 496, 512 (1939) 12

Herndon v. Lowry, 301 U. S. 242, 262-64 (1937) 14

PAGE

Johnson v. Maryland, 254 U. S. 51 (1920) 12

Kunz v. N. Y., 340 U. S. 290 (1951) 9

McCulloch v. Maryland, 4 Wheat 316 (1819) 12

N. A. A. C. P. v. Alabama, ex rel. Patterson, 357 U. S. 449 (1958) 12

New Negro Alliance v. Sanitary Grocery Co., 303 U. S. 552 (1938) 11

Rockwell v. Morris, 10 N. Y. Supp. (2d) 749, cert. den. 368 U. S. 913 (1962) 10

Sellers v. Johnson, 163 F. (2d) 877 (CCA 8—1947), cert. den. 332 U. S. 851 (1948) 10

Terminiello v. Chicago, 337 U. S. 1, 4 9

Thompson v. City of Louisville, 362 U. S. 199 (1960) ... 13, 14

Thornhill v. Alabama, 310 U. S. 88 (1940) 11

U. S. v. Macintosh, 283 U. S. 605 (1931) 12

U. S. v. Schwimmer, 279 U. S. 644 (1929) 12

Winters v. People of the State of New York, 333 U. S. 507 (1948) 14

Yick Wo v. Hopkins, 118 U. S. 356, 373 (1886) 15

ARTICLE CITED

109 U. of Pa. L. Rev. 67 (1960) 14

United States Court of Appeals

For the Fifth Circuit

No. 19703

Congress of Racial Equality, John Doe and Mary Doe,
Appellants,
against

Bryan Clemmons, Wingate White and John Christian, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana,
Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLANTS

Statement

Appellants appeal from a judgment and order granting a permanent injunction issued by the United States District Court for the Eastern District of Louisiana on the 2nd day of February, 1962 and entered on the 5th day of February, 1962. Prior thereto and on January 4th, 1962, the Honorable E. Gordon West issued a preliminary injunction (T. R. 31)* and, before that, on December 15th,

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* References are to pages of the Transcript of Record.

1961, a temporary restraining order (T. R. 18). The hearing on the application by appellees for a permanent injunction was heard by Judge West on January 11th and 12th, 1962. The Clerk's certificate certifying to said record is on page 371 of the record on file with this Honorable Court.

Abstract of Facts

In early December, 1961, the Baton Rouge Chapter of The Congress of Racial Equality, hereinafter referred to as CORE, wrote to several business establishments in Baton Rouge, Louisiana (T. R. 10) for the purpose of negotiating employment opportunities for negroes; CORE received no reply to its communications. After the decision in *Garner* v. *Louisiana,* 368 U. S. 157 (December 1961), CORE pickets appeared on December 12th and 13th at various stores carrying signs which urged the community to refuse to patronize them because of their discriminatory treatment of negroes. On December 13th, 1961, the pickets were asked by the Police Department and/or the Sheriff's office to cease their activity because it was allegedly in violation of certain state statutes. The pickets complied.

On the following day, however, December 14th, twenty-three pickets reappeared and were arrested. In part, as a response to these arrests, CORE planned a meeting in the City of Baton Rouge, East Baton Rouge Parish. Testimony was elicited at the hearing that those public officers who are normally notified that parades and demonstrations are scheduled did, in fact, on the evening of December 14th, have knowledge that CORE intended to conduct a demonstration. Significantly, when the demonstrators gathered in Scotlandville, Louisiana, about 4½ miles north of Baton Rouge on December 15th, a number of police and/or the Deputy Sheriffs were on hand to regulate the assembly.

The assembly began with the gathering of negroes at or near the Southern University campus, and after a short meeting at a nearby church, they proceeded toward the courthouse in the City of Baton Rouge.

The record as a whole emphasizes the non-violent character of CORE's activity, from the picketing and "sit-in" demonstrations on December 12th, 13th and 14th through and including the assemblies at the courthouse and on Third Street on December 15th, 1961. The appellees' own witnesses attested to the peaceful behavior of appellants:

Albert V. Tonguis, employed by WAFB-TV, Baton Rouge, recorded the events of December 15th, 1961 on film and testified that police dogs were used to disperse the crowd on Third Street (T. R. 44); that there was no violence at any time (T. R. 48, 49) except that he characterized the use of tear gas as violence by the police officers (T. R. 48).

Tom Henderson, Captain in the Sheriff's Office, East Baton Rouge Parish, stated at the hearing that he had notice of the demonstration prior to the event (T. R. 72); that Reverend Cox asked him the procedure to be used in marching to the courthouse, and that the procedure was then complied with (T. R. 62, 63). The witness testified that it is not the custom for his officers to be on the scene when a demonstration or parade is scheduled (T. R. 71), yet when a Masonic or fraternal organization has a parade, he makes several officers available to direct the parade and assure a free flow of traffic. It should be noted that outside Baton Rouge City limits, where the demonstration began, a permit to conduct this type of activity is not needed (T. R. 84). Further, the witness made no attempt to stop the assembly.

The testimony of John Christian, Mayor-President of the City of Baton Rouge, illustrates the temper of CORE and the other appellants. Mayor Christian stated that nothing about the assembly indicated unlawful intent by the participants (T. R. 100, 101); nor did anyone in the group perpetrate any act of violence on any member of the community (T. R. 102); and in fact nothing took place which he felt could not be controlled. Moreover, it was the Mayor's opinion that the participants did not intend to provoke violence (T. R. 112); nor did the witness at any time give instructions to disperse the assembly (T. R. 91).

It was also self-evident that the law enforcement officials could handle the situation adequately since they were able to have twelve to fifteen hundred people clear the sidewalk "within seconds" (T. R. 110).

Wingate M. White, Baton Rouge Chief of Police, stated that Reverend Cox approached him and detailed the program to take place at the courthouse (T. R. 150) and based upon those representations, Reverend Cox was told to go ahead with the demonstration (T. R. 152). The witness testified that Reverend Cox' mention to the crowd of a lunch counter sit-in was well received; and, most important, that when the Sheriff asked the assembly to disperse, Reverend Cox said nothing (T. R. 64—but see T. R. 311). Chief White expressed his concern for possible violence for two reasons: (1) the assembly would overrun the jail (T. R. 165) despite Reverend Cox' repeated instruction for non-violence; and, (2) some white people on the opposite side of the street would attempt violence (T. R. 166). He further agreed that the tear gas grenades took about one minute to disperse the crowd (T. R. 168) and that police dogs were used to break up the assembly on Third Street (T. R. 173).

Rufus S. Trigg, Jr., Inspector of Detectives with the Baton Rouge Police Department, did not see any physical violence during the assembly (T. R. 239).

James E. Erwin, employed as a news director by WIBR, relates that Reverend Cox told the Chief of Police at the outset of the meeting in front of the courthouse, that the participants would sing, offer silent prayer, pledge allegiance to the flag and hear a short talk (T. R. 257), all of which occurred. The witness stated that between the various parts of the program, Reverend Cox stated: "We are a non-violent group and we think well of all people. If they spit on us, we will not spit back" (T. R. 260). Mr. Erwin testified, with regard to the possibility that the crowd might get out of hand, that the potential trouble did not emanate from CORE, but from the white spectators on the opposite side of the street (T. R. 264).

In commenting on other CORE activities prior to December 15th, 1961, the witness observed that they were not accompanied by any violence (T. R. 280). Additionally, the only violence that Mr. Erwin saw on December 15th were the acts by police officers in using tear gas and dogs to break up the crowds (T. R. 282). Even when Reverend Cox called for a lunch counter "sit-in", the crowds' reaction was one not of violence, but of exuberance (T. R. 292).

Bryan R. Clemmons, Sheriff of East Baton Rouge Parish, stated that he had knowledge on December 11th that a meeting was going to take place. The witness testified that the situation, at the beginning, was "as pretty as you please".

Although he said Reverend Cox told the crowd that the participants were to be peaceful (T. R. 308, 309), the witness' bias against appellants was manifest when he stated that if there had been any acts of violence, the appellants would have been the aggressors (T. R. 324). His testimony nonetheless admitted that there was no violence.

Statement of the Case

Appellants appeal from the judgment and order granting a permanent injunction in the District Court of the United States for the Eastern District of Louisiana on February 5, 1962 (T. R. 365).

In question here are the propriety and constitutionality of a Federal Court's use of its injunctive power to enjoin CORE and its members from financing, sponsoring, encouraging or engaging in meetings or other activity in the future because of their participation in an assembly on December 15th, 1961 in the City of Baton Rouge, Louisiana.

The broad provisions of the injunction limit the appellants' free exercise of fundamental rights guaranteed them by the Constitution and laws of the United States. By its terms, CORE may no longer assemble in the City of Baton Rouge or the Parish of East Baton Rouge and express their views. As a result, appellants are being denied the rights guaranteed to all citizens under the First and Fourteenth Amendments to the Constitution.

The Court below, in its opinion, appears to accept the view that the demonstration held in front of the Courthouse on December 15th, 1961 was under control until a CORE leader, referred to a "sit-in" at various lunch counters in Baton Rouge, and that this reference was received by the demonstrators with exuberance. Thus, implicit in the Court's ruling is the attempt at limiting appellant's right to speak freely. For the record, as a whole, indicates that neither the leaders of CORE nor its members or others who participated in the complained of activity engaged in any act or acts of violence, and that only by finding the "speech" aspect of the assembly as inducement to illegal acts could the position taken be sustained. For the record also shows that the fear of violence came not from the participants but from gathering of antagonistic whites across the street.

The pivotal issue may thus be stated: may the fundamental rights of assembly and speech be denied a peaceful group of citizens advocating the rights which law and the Constitution guarantees to them merely because other groups of citizens, not in sympathy with their views, act in a hostile manner?

The record is barren of any incident which could not be resolved by remedies available to appellees at law. Appellants therefore submit that the judgment and injunction issued by the District Court lacks support in the record, violates appellants' rights to freedom of speech, association and assembly protected by the First and Fourteenth Amendments, violates CORE's members privileges and immunities as citizens of the United States under Article IV of the Constitution, and constitutes an unconstitutional prior restraint upon the appellants.

Exceptions to the Findings in the District Court

As a prerequisite to the issuance of an injunctive order, the appellees had claimed that they had no adequate remedy at law. It is clear, however, that had the laws of the State of Louisiana or the City of Baton Rouge been violated, those who committed such violations would have been subject to arrest. It is noteworthy that the only arrests made on December 15th occurred at places other than on St. Louis Street, where the assembly was held.

Moreover, the record does not indicate that there was in fact any irreparable damage to the appellees or that such damage was "inevitable".

It was error for the District Court to find that the appellants acted as a mob in light of its own findings that:

(1) the Reverend Cox had complete control over the assembly, and (2) Reverend Cox advocated non-violence and instructed the assembly to behave in a passive way despite the taunts of others. The District Court acknowledged that the record was replete with testimony that the appellants did not commit or encourage any acts of violence.

The appellants submit that the Court should not have considered appellants' failure to secure a permit to conduct a parade or demonstration in Baton Rouge since the record clearly shows the prior knowledge of the City officials of the proposed demonstration; and, more significantly, that the Chief of Police told Reverend Cox that he could proceed with the demonstration program as it had been outlined. Surely, such permission is tantamount to having given the appellants a "permit" to conduct their demonstration.

Moreover, the testimony at the hearing clearly illustrates the ability of the Police Department to cope with the situation as it developed. The witnesses estimated that the police were able to disperse both the assembled group and its opposition in approximately one minute.

The Court finds that Reverend Cox told his followers, after being asked to disperse, "not to move". Yet, another witness at the scene, the Chief of Police, testified that nothing was said by Reverend Cox after the Sheriff's order was given (T. R. 64). We believe that the record as a whole shows clearly that there was a marked absence of evidence necessary to justify the issuance of a permanent injunction in this case.

ARGUMENT

POINT I

The injunction was issued in violation of the First and Fourteenth Amendments of the Constitution.

The rights of the Congress of Racial Equality and the other appellants to encourage, advocate and assist others and to assemble for the purpose of attempting to end discriminatory practices because of race or color are constitutionally protected. As stated in the Supreme Court in *Terminiello* v. *Chicago,* 337 U. S. 1, 4:

> "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and pre-conceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, * * * is nevertheless protected against censorship or punishment unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest."

The fact that either the idea communicated or the means of communication are disturbing to others in the community does not warrant interference by Government with speech. Thus, even where the speech and assembly consists of an insulting address in derogation of other religious faiths, restraint upon the speaker has been held unconstitutional as a forbidden restraint upon the right of free speech.

Kunz v. *N. Y.,* 340 U. S. 290 (1951);

Rockwell v. *Morris,* 10 N. Y. Supp. (2d) 749, cert. den. 368 U. S. 913 (1962).

In the instant case, the finding of the Court was based in part upon the alleged "inevitable" threat of mob violence, although the testimony clearly indicated that all of the activity in which appellants participated was peaceful, or at the very least, that the police authorities were capable of avoiding violence.

The Court's reliance upon such an unwarranted presumption as the basis for the issuance of the injunction is contrary to the law. In *Sellers* v. *Johnson,* 163 F. (2d) 877 (CCA 8—1947), cert. den. 332 U. S. 851 (1948), the Court of Appeals said (p. 881):

> "The theory that a group of individuals may be deprived of their constitutional rights of assembly, speech and worship if they have become so unpopular with or offensive to the people of a community that their presence in a public park to deliver a Bible lecture is likely to result in riot and bloodshed, is interesting but somewhat difficult to accept. Under such a doctrine unpopular political, racial and religious groups might find themselves virtually inarticulate. Certainly the fundamental rights to assemble, speak and to worship cannot be abridged merely because persons threaten to stage a riot or because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised."

The argument cannot be made therefore that the reaction of others, in opposition to the speech and assembly which occurred, justifies restraint upon appellants in the peaceful exercise of their right of speech and assembly. The classic doctrine is set forth in *Cantwell* v. *Connecticut,* 310 U. S. 296, 308 (1940). The Court there said:

> "... A state may not suppress free communication of views, religious or other, under the guise of conserving desirable conditions."

Similarly, the Supreme Court in *Buchanan* v. *Warley,* 245 U. S. 60, 81 (1917) stated:

> "It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution."

See also: *Cooper* v. *Aaron,* 358 U. S. 1 (1958).

Our position is, of course, that a federal court by the use of its injunctive power does not have the authority to deny to citizens "rights created or protected by the Federal Constitution".

Nor should the Court have relied upon the exhibits or testimony as to the "sit-in", boycott or picketing allegedly conducted by appellants prior to the assembly. Such reliance was misplaced in any event: first, because each of these activities, whether conducted separately or as part of a program, constitute peaceful exercises of free expression and secondly, there was no evidence that these activities were other than peaceful or that they constituted the probable cause for "inevitable" unrest or violence. See *Garner* v. *Louisiana,* 368 U. S. 157 (1961); *Thornhill* v. *Alabama,* 310 U. S. 88 (1940); *New Negro Alliance* v. *Sanitary Grocery Co.,* 303 U. S. 552 (1938).

POINT II

The injunction violates the privileges and immunities of the appellants and constitutes an illegal prior restraint on members of the Congress of Racial Equality.

The broad sweep of the injunction denies to the appellants the right to freely associate and to engage in common cause for their own political and social betterment. That denial constitutes an invasion of appellant's privileges and immunities in violation of Article IV, Section 2 of our Constitution.

See *U. S.* v. *Schwimmer,* 279 U. S. 644 (1929); *U. S.* v. *Macintosh,* 283 U. S. 605 (1931); and *Hague* v. *CIO,* 307 U. S. 496, 512 (1939), where Mr. Justice Butler said:

> "* * * it is clear that the right peaceably to assemble and to discuss these topics and to communicate respecting them whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects"

The existence of a privilege granted by the Constitution implies the existence of immunity protected by the Federal Government against harassment, reprisal or punishment. Certainly then, a federal court cannot properly participate in the denial of such privileges. *McCulloch* v. *Maryland,* 4 Wheat 316 (1819); *Johnson* v. *Maryland,* 254 U. S. 51 (1920) and the cases cited therein; and *N. A. A. C. P.* v. *Alabama, ex rel. Patterson,* 357 U. S. 449 (1958).

In addition, the injunction constitutes an inhibition and restraint upon communication by The Congress of Racial Equality and its members in the future. The threat of punishment for contempt, if appellants continue their peaceful communication, is by itself such an inhibition.

Can a Federal Court therefore, under the cloak of protecting against breach of the peace or guarding the public safety, so restrain the appellants that they may not exercise rights in the future which have been guaranteed to them by the Constitution?

The power of the police to effect summary arrest where breach of the peace appears imminent is not questioned. Indeed, the record shows that such arrests were made. There must, however, be safeguards against the use of judicial power to enforce discriminatory policies, which policies would not be acceptable in the form of legislative or administrative acts. Where a Court affirmatively sanctions incursion by a community into these areas of protected activity, it is running counter to the guarantees provided by the First and Fourteenth Amendments. *Garner* v. *Louisiana,* 368 U. S. 157 (1961); *Thompson* v. *City of Louisville,* 362 U. S. 199 (1960).

POINT III

The injunction in any event is so vague and sweeping that it is unconstitutional.

The order in this case prohibits the appellants from "financing, sponsoring, encouraging or engaging in meetings or any other activity whereby violations of State or Federal laws are suggested, advocated or encouraged; * * *" (whether or not such laws are constitutional or binding upon the appellants); "* * * financing, sponsoring, encouraging or engaging in meetings whereby the public ways, streets, sidewalks or highways of the City of Baton Rouge, or the Parish of East Baton Rouge, are blocked, or the unimpaired use thereof denied to other traffic; * * *" (whether or not such use is peaceful and constitutes protected picketing or assembly within the meaning of the First Amendment); "* * * financing, sponsoring, encouraging or engaging in meetings or any other activities wherein or whereby disobedience to the lawful orders of properly constituted law enforcement agencies and their personnel is advocated, suggested or encouraged * * *'' (without any guide as to what constitutes ''lawful orders'').

Similar restrictions exist as to acts ''either for the purpose of impeding or obstructing the administration of justice or the orderly functions of government * * * or which do impede, hinder or obstruct officers of the law, or officers of the Parish of East Baton Rouge, or the City of Baton Rouge, from the performing and discharging of the duties of their respective offices.''

On its face, the injunction so restricts the ambit of conduct which CORE and the other appellants may engage in that it is unconstitutional. *Thompson* v. *City of Louisville,* 362 U. S. 199 (1960); *Chaplinsky* v. *New Hampshire,* 315 U. S. 568 (1942); *Winters* v. *People of the State of New York,* 333 U. S. 507 (1948); 109 U. of Pa. L. Rev. 67 (1960).

An injunction, like a statute, must meet standards of clarity and reasonableness. As the Supreme Court said, with regard to the Georgia Insurrection Statute, in *Herndon* v. *Lowry,* 301 U. S. 242, 262-64 (1937):

> ''* * * If, by the exercise of prophecy, he can forecast that, as a result of a chain of causation, following his proposed action a group may arise at some future date which will resort to force, he is bound to make the prophecy and abstain, under pain of punishment, possibly of execution * * *
>
> ''* * * The Law as thus construed, licenses the jury to create its own standard in each case * * *
>
> ''* * * No reasonable ascertainable standard of guilt is prescribed. So vague and indeterminate are

> the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment.''

Moreover, it has been clearly established that the use to which this injunction is put, that is, restraining appellants from peacefully assembling and speaking their minds with regard to the discriminatory treatment they are receiving, in itself consists of such discrimination as to make it repugnant to the Constitution. As the Supreme Court said in *Yick Wo* v. *Hopkins,* 118 U. S. 356, 373 (1886):

> ''Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution * * *''

The gravity of the threat of silencing a large part of the community is implicit in this case. If this community can succeed, communities throughout our country can restrain those who espouse unpopular causes, discouraging our police authorities from a dispassionate effort to keep the peace and ultimately result in perpetuating practices outlawed by the Constitution and the laws of the United States.

CONCLUSION

We respectfully urge this Court to reverse the judgment below and to vacate the injunctive orders issued.

Respectfully submitted,

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Appeal from the District
Eastern District of Loui

APPLICATION OF
REHEARING

R. GORDON
JOHN V.
SARGENT
JOHN F. V
Attor

Franklin Press,

IN THE

ED STATES
OF APPEALS
TH CIRCUIT

No. 19,703

ACIAL EQUALITY, JOHN DOE
nd MARY DOE,

Defendants-Appellants,

versus

WINGATE WHITE and JOHN CHRIS-
in his official capacity as Mayor-
City of Baton Rouge, Louisiana,

Plaintiffs-Appellees.

ict Court of the United States for the
uisiana, Hon. E. Gordon West, Judge.

PLAINTIFFS-APPELLEES FOR AND BRIEF IN SUPPORT

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IN THE

UNITED STATES
COURT OF APPEALS
FIFTH CIRCUIT

No. 19,703

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,

Defendants-Appellants,

versus

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana,

Plaintiffs-Appellees.

Appeal from the District Court of the United States for the Eastern District of Louisiana, Hon. E. Gordon West, Judge.

APPLICATION OF PLAINTIFFS-APPELLEES FOR REHEARING AND BRIEF IN SUPPORT

May It Please the Court:

A rehearing should be granted herein because:

I.

THIS COURT ON ITS OWN MOTION AND WITHOUT THE ISSUE HAVING HERETOFORE BEEN RAISED, OR ARGUED, HAS SUPPLIED A MOTION TO DISMISS. A LEGAL QUESTION WHICH WAS NEITHER RAISED, BRIEFED, NOR ARGUED, CANNOT BE CONSIDERED BY AN APPELLATE COURT.

The opinion rendered September 12, 1963, sustains a motion to dismiss which was never filed in these proceedings. The opinion either presupposes that such a motion was filed, or the Court has supplied it on its own motion. In either event, the simple fact is that no motion to dismiss was ever filed and we do not believe that this Court has authority, on appeal, to supply that which the defendants themselves did not. Not only does the Court supply the motion but it sustains it on legal issues which the defendants neither raised, briefed, nor argued in this Court or in any other Court.

It is true that the question of jurisdiction of the Federal Court may be considered by an Appellate Court on its own motion (*Huffman v. Baldwin*, 82 Fed. 2nd 5). The opinion rendered by this Court, therefore, properly concluded that the District Court had jurisdiction under the authority of *Bell v. Hood*, 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939. Beyond this, the Court, on its own motion, could not go. But if some plenary authority permitted the Court to go further, we submit that, in all fairness, it should not have done so without having afforded counsel an opportunity to brief and argue the important legal issue upon which the original opinion was to be predicated.

To have decided the case as it did, the Court does violence to the jurisprudence which holds that questions which were neither raised, briefed, nor argued will not be considered by an Appellate Court on appeal. *U. S. v. Spector*, 343 U. S. 159, 72 S. Ct. 591, 96 L. Ed. 863; *Western Union Telegraph Company v. Winland*, 182 Fed. 493; *A. Schrader's Sons v. Wein Sales Corporation*, 9 Fed. 2nd 306.

And the opinion does violence to the basic legal principle behind these holdings; that is, that the burden of demonstrating error is on the appellant. *Kimball Laundry Company v. U. S.*, 166 Fed. 2nd 856. As it stands here, the Court, not appellants, suggested the "error," and the Court, not appellants, supplied the legal argument upon which the "error" was to be corrected.

In this case, counsel for the appellees has never been afforded an opportunity to argue or brief the questions raised by this Court in its original opinion, nor has counsel had an opportunity to present their interpretation of the case of *Collins v. Hardyman*, 341 U. S. 651, 71 S. Ct. 937, 95 L. Ed. 1253, upon which the original opinion is so stoutly founded. Since the motion to dismiss (which this Court supplied on its own motion) is sustained solely upon the holding of the Supreme Court of the United States in the *Collins* case, it would appear that the ends of justice and fair play would best be served by the granting of a rehearing, at least to the extent of affording counsel for the appellees an opportunity to properly brief and argue the important and far-reaching issues raised by this phase of the Court's decision.

As to be hereafter pointed out, we do not believe that *Collins v. Hardyman*, supra, supports the conclusions reached by this Court in its original opinion; nor do we believe that plaintiffs' reliance on *Brewer v. Hoxie School District*, 238 Fed. 2nd 91, can be used as a "springboard" for considering the issue of "State action" as a prerequisite to application of 42

USCA 1985(3), particularly where that issue had not been raised in the District Court by the only means available—a motion to dismiss. While it is true (as the original opinion indicates) that counsel for appellees relied upon the case of *Brewer v. Hoxie School District*, supra, this reliance was solely for the purpose of demonstrating **jurisdiction** under the provisions of 42 USCA 1985(3) **and for the purpose of further demonstrating that injunctive relief could be granted under the cited statutory provision.**

The question of whether "State action" was a prerequisite for asserting a cause of action under 1985 had been considered by counsel for appellees in the preparation and institution of this suit. However, neither the question of jurisdiction nor the right of the plaintiffs to proceed under 1985 was raised by counsel for appellants, either by motion to dismiss or by any other appropriate pleadings in this or the District Court. The sole defense of the defendants, both in the lower Court and in this Court, was that injunctive relief was improper, not because "State action" was not demonstrated but because the defendants had allegedly done nothing which required the invoking of Federal injunctive authority.

As pointed out above, the appellant had the burden of demonstrating error by the Court below. Clearly this is the law in other cases. The appellant is further obligated in other cases to discuss those legal issues upon which he felt the District Court erred or be held to waive those issues. Once issues are properly raised by assignment of error, the appellee is afforded an opportunity to understand the basis of the appeal, and to properly brief and argue the legal issues involved. In this case, this opportunity has not been afforded counsel for the appellees, and counsel for these appellees sincerely believes, and respectfully suggests, that the legal issue which this Court has raised and decided upon its own motion deserves further consideration by the Court in light of proper legal argument which can now only be presented on rehearing. On this particular and important legal issue appellees have, in effect, been denied their day in Court.

An example of the distinction between "supplying" a defense and passing upon one properly raised is the case of *Mitchell v. Greenough*, 100 Fed. 2nd 184, cited and relied upon by this Court in the original opinion. As authority for its dismissal of the complaint here, the original opinion takes the position that this earlier case in which the Appellate Court found jurisdiction but dismissed the case for failure of the plaintiffs to state a cause of action upon which relief could be granted, was authority for this Court to do likewise. However, a careful review of *Greenough* will indicate that the defendants there filed a motion to dismiss for lack of jurisdiction, **as well as demurrers which raised the question of the "sufficiency of the facts stated in the complaint to constitute a cause of action.**" In other words, the defendants in *Greenough* had properly filed a motion to dismiss which raised the issue the Appellate Court undertook to consider, based upon proper argument of both counsel.

In this case no similar motion was filed—not only was the motion not filed, but the legal issues inherent in such a motion were never raised, briefed, or argued by appellants. All of this was done in this case on this Court's own motion without benefit of argument, contrary to the above-cited and recognized principles of law. To this extent, *Greenough* is not "apposite here" as the original opinion suggests.

In the final analysis, whether legally required or not, counsel for appellees should have been afforded an opportunity to at least brief and argue the basic legal issue passed upon in the original opinion before a decision was rendered, even if it required, at the request of the Court, the filing of supplemental briefs and the hearing of supplemental argument. The only means by which this right can be now protected is by the granting of a rehearing for this purpose.

It is therefore submitted that a rehearing should be granted in order that counsel may be afforded their right to argue the important legal issues raised for the first time by this Court in its original opinion; otherwise, recognized legal principles in the handling of appeals will have been violated and the ends of justice and fair play defeated.

II.

UNDER THE PROVISIONS OF 42 USCA 1985(3) "STATE ACTION" IS NOT REQUIRED OR NECESSARY TO STATE A CAUSE OF ACTION, AND *COLLINS V. HARDYMAN* DOES NOT SO HOLD.

In support of its conclusion that "State action" is a prerequisite to a cause of action sought to be asserted under the provisions of 42 USCA 1985(3), this Court in its original opinion relies almost exclusively on the holding of *Collins v. Hardyman*, supra. We respectfully submit that *Collins* is not authority for the conclusion reached by this Court in its original opinion and for these reasons:

In *Collins*, suit was instituted under the provisions of 8 USCA Section 47(3). Section 1985 was not before the Court. It was discussed only in passing by the three Justices who joined in the dissenting opinion and then only for the purpose of demonstrating that "State action" was not a requirement in all sections of the Civil Rights Act. This dissent was clearly of the opinion that "State action" was not a prerequisite for relief under the statutory provisions there before the Court, pointing out that the legislative history of the several sections of the Civil Rights Act clearly indicated that where Congress intended to limit civil rights legislation to action under color of State law, it said so in unmistakable terms.

In *Collins*, relief was sought by one organization of white citizens against another group of private individuals who were also white. California law made the acts of the defendants illegal. The majority opinion held that the action of the defendants did not deprive the plaintiffs of equal protection of the law, because the plaintiffs had a right to seek protection of the law to the same extent as did any other citizen of the State of California. In other words, the plaintiffs had not been denied equal protection of the law for there were California laws available for their protection to the same extent as they were available to all other citizens.

Viewed in light of its broadest concept, *Collins* is not applicable to the proceedings before this Court. The complaint of the plaintiffs here is that they have an equal right to utilize the public streets and ways and anyone who violates this right by obstructing the public streets and ways prevents these plaintiffs from exercising a right which the law grants them. This is not a case where these plaintiffs were solely prevented from exercising these rights by other individuals. The demonstrators in this case not only prevented plaintiffs from the exercise of their right, but actually interfered with State officials in their efforts to guarantee the plaintiffs the exercise of this right. Would not the same be true where all persons are authorized to register to vote, but cannot because certain individuals block the doorway of the Registrar of Voters? Would not the same be true where a crowd intimidates public officials in their efforts to guarantee a fair and impartial trial? In any of these cases, the State officials have clearly been interfered with, and are thereby unable to guarantee equal protection of the law to **all.** Are we to say that 1985 is applicable because "State action" is not involved?

In the final analysis, in each of these instances, as in the present case, there is a failure of State action solely because of the demonstrations. Because of this, there was no right which these plaintiffs could have asserted in Court or otherwise to insure free use of the public ways. Not even the State officials vested with authority to bring about free use of the public ways could accomplish this purpose because of interference by the defendants.

As pointed out above, we do not believe that *Collins* requires the conclusion that the only action prohibited by 1985 is "State action." If this be the case, then the adoption of the statute by Congress was a meaningless act. It would be difficult, if not impossible, to conceive what type of State action would be involved by which two or more persons conspire to go upon the highway and interfere with State officials in their efforts to provide equal protection of the law to all persons. It is hardly conceivable that the State or its officials could conspire to interfere with its own officials. It follows that if 1985 is to have any meaning at all, it must be given that meaning which its language clearly indicates. If given such a meaning, it becomes obvious that State action is not a prerequisite for the exercise of rights under 1985, as so eloquently pointed out by the dissenting opinion in *Collins v. Hardyman*:

> "The language of the statute refutes the suggestion that action under color of state law is a necessary ingredient of the cause of action which it recognizes. R.S. Section 1980(3) speaks of 'two or more persons in any State or Territory' conspiring. That clause is not limited to state officials. Still more obviously, where the section speaks of persons going 'in disguise on the highway . . . for the purpose of depriving . . . any person or class of persons of the equal protection of the laws', it certainly does not limit its reference to actions of that kind by state officials. When Congress . . . did intend to limit comparable civil rights legislation to action under color of state law, it said so in unmistakable terms."

This conclusion reached by the dissenting opinion in *Collins* is further supported by the concurring opinion of Justice Harlan in the subsequent case of *Monroe v. Pape*, 365 U. S. 167. In *Pape*, the question was whether or not the provisions of 42 USCA 1983 applied where police officers were acting outside of the scope of their authority, it being argued that this was not "State action" to which the statute referred. After a careful consideration of the history of this civil rights legislation, the Supreme Court concluded that this legislation could be used to protect against violations of State law as well as Federal statutory provisions. Justice Harlan was of the opinion that the conclusion reached by the majority was proper, but could have been more simply reached, pointing out:

> "We have not passed upon the question whether 42 USC Section 1985, which was adopted as the second section of the Act that included Section 1983, was intended to reach only the Ku Klux Klan or other substantially organized group activity, as distinguished from what its words seem to include, any conspiracy of two persons with 'the purpose of preventing or hindering the constituted au-

> thorities of any state . . . from giving or securing to all persons within such state . . . the equal protection of the laws . . .' Without now deciding the question, I think it is sufficient to note that the legislative history is not without indication that what the words of the statute seem to state was in fact the meaning assumed by Congress."

It is obvious by reference to the above citation that the Supreme Court of the United States has not held Section 1985 to be limited in its application to cases involving "State action." This being the case, a motion to dismiss, even though one had been properly filed in these proceedings, should not have been sustained. The case should have more properly been decided on the question of whether or not these demonstrators did in fact interfere with the duly constituted authority in providing equal protection of the law to all persons. If there was such interference, as the District Court found there to be, the injunctive relief granted by the District Court should have been sustained under the authority of *Brewer v. Hoxie School District*, supra.

The only conceivable basis on which *Brewer* cannot constitute authority for this Court to grant injunctive relief as sought, is that initially argued by counsel for the defendant in the District Court: that is, that the *Brewer* case involved an effort on behalf of a school board to provide integrated facilities and thus afford equal protection of the law to negro children; that other citizens who are denied equal protection of the law are not entitled to similar relief in the Federal Courts. Of course, all persons have civil rights regardless of race, color or creed, as counsel finally admitted under questioning by the Court. But even without any such admission on the part of counsel, it is obvious from the provisions of 42 USCA 1985 that they were not designed to provide equal protection of the law for any one person or class of persons alone. As was pointed out in the *Brewer* case, the statute provides as follows:

> "Section 1985. Conspiracy to interfere with civil rights—Preventing officer from performing duties.
>
> "Depriving persons of rights and privileges.
>
> "(3) If two or more persons in any state or territory conspire . . . for the purpose of preventing or hindering the constituted authorities of any state or territory from giving or securing to **all** persons within such state or territory the equal protection of the laws . . ." (Emphasis added)

Clearly the statute was designed to afford equal protection of the law to "all" persons. Under these circumstances, if injunctive relief was properly sought and granted in the *Brewer* case, it may equally be sought and granted in these proceedings.

The conclusion that no conspiracy existed within the meaning of the statute disregards the testimony and the findings of fact. Without detailing again the facts of this case, it suffices to say that what was done by these demonstrators was clearly sufficient to constitute a conspiracy under the provisions of 42 USCA 1985, for as pointed out in *Hoffman v. Halden*, 268 Fed. 2nd 280:

> "It should be axiomatic that what one person can do, two or more persons can do jointly or in concert. This is in reality all that a civil conspiracy is—concerted action or a sort of civil partnership in the commission of the injury whereby one may act for his partner and both be bound."

Clearly, there was "concerted action" here on the part of this defendant organization and others acting together with it. The result of that "concerted action" was to hinder and interfere with the duly constituted authorities in providing equal protection of the law to all persons.

It is therefore respectfully submitted that this Court committed error in its prior opinion rendered herein and that a rehearing should now be granted in order that counsel for appellees may have a fair opportunity to brief and argue the legal issues upon which the original opinion is predicated.

Respectfully submitted,

By Attorneys:

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Baton Rouge, Louisiana

CERTIFICATE

I certify that the within application for rehearing is presented in good faith and not for the purpose of delay. I further certify that a copy of the above and foregoing application for rehearing has this day been mailed to all Counsel of Record for the defendants, by placing same in the United States mail, postage prepaid.

Baton Rouge, Louisiana, this 2nd day of October, 1963.

R. GORDON KEAN, JR.

10/15/63

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 19703

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,
Appellants,
versus
BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(September 12, 1963.)

Before TUTTLE, Chief Judge, WISDOM, and GEWIN, Circuit Judges.

WISDOM, Circuit Judge: This case presents new twists in civil rights litigation. The thrust of the holding below is that the State action here was action of the Congress of Racial Equality and Negro demonstrators. The State invokes the Fourteenth Amendment against private individuals, although the Fourteenth Amendment establishes constitutional rights in favor of private individuals and against the State. Moreover, this unusual federal action is in an area that is essentially one of State responsibility—the preservation of public order; and there is no lack of breach of peace statutes in Louisiana. The relief sought and granted in the name of the Fourteenth Amendment is a federal injunction to protect the police power of the State from private persons said to have interfered with the constitutional duty of city and parish officers to provide equal protection of the laws to all citizens. The interference consisted of a demonstration of Negro college students in front of the Courthouse in Baton Rouge, drawing to that location most of the city and parish police officers. Implicit in the district court's decision is the notion that when private persons interfere with a duty imposed on a State by the Fourteenth Amendment, it becomes a matter of sufficient federal concern to justify prior restraints by federal injunction. In the circumstances, a proper regard for the federal system requires that the Court scrutinize closely the question of jurisdiction and whether on the merits the case is indeed one arising under the Constitution and laws of the United States.

This action arose out of a demonstration of Negroes in Baton Rouge, Louisiana, to protest the jailing of pickets who had urged a boycott of stores practicing racial discrimination. December 15, 1961, a large group of Negro students from Southern University, under the supervision of officers of the Congress of Racial Equality, marched from Scotlandville, Louisiana, to the Courthouse in Baton Rouge, a distance of four and a half miles. The Mayor of Baton Rouge had instructed the police office to provide necessary protection to the demonstrators as long as their activities were orderly. At times the march blocked traffic, but there was no disorder. When the march reached the Courthouse the crowd, marchers and Negro bystanders, numbered about 1500 to 2000. There were about 300 white men across the road from the demonstrators. All of the police officers on duty and sixty off-duty officers were pressed into service. The Negroes followed orders given by the Reverend B. Elton Cox, an officer of CORE. When the marchers first arrived in the downtown area, Cox and the Chief of Police conferred. Cox said that the demonstrators wanted to congregate for seven minutes at the Courthouse, where the parish prison is located; that they would say the Oath of Allegiance, sing two songs, hear a four-minute speech, and then return to Southern University. The Chief of Police told Cox that such a demonstration was permissible as long as it was orderly. The demonstration took place as planned, and without any disorder, until Cox urged the Negroes to go to lunch counters in twelve stores, demand service, and refuse to move for one hour. The trial judge found: "It was at this moment, according to the uncontradicted testimony . . . that an outbreak of physical violence was almost a certainty"; the "entire situation was 'tense with impending violence' and the conduct of the crowd 'was fast approaching a mob reaction.'" When the demonstrators refused to move, the sheriff ordered tear gas bombs to be fired into the crowd. The streets were cleared within two minutes.

Alleging an imminent threat of further demonstrations, the mayor and law enforcement officials of Baton Rouge sought injunctive relief in the federal district court. The complaint avers that CORE, its officers and agents, and John Doe and Mary Doe and others were fomenting violence and breaches of peace in the City of Baton Rouge and were encouraging a conspiracy to violate the laws of Louisiana and of the United States. The gist of the complaint is stated in the following allegation:

> "[T]he actions of these defendants and others
> acting in concert with them, has resulted in
> the obstruction and complete blockage of certain
> public streets and ways of the City of Baton
> Rouge, thereby denying and depriving plaintiffs ①
> and individual citizens of the State of Louisiana and of the United States of America of
> their civil rights, including the right to freely
> use the public streets and ways without interference and hindrance; and in addition, these
> acts on the part of the defendants, and others
> in concert with them, are such as to hinder ②
> plaintiffs in their official capacities as constituted authorities of the Parish of East Baton
> Rouge, Louisiana, and of the State of Louisiana, and of the City of Baton Rouge, Louisiana, from giving or securing to all persons

COMPLAINT

① deprive πs of civil rts, incl rt to freely use pub sts

② hinder πs fm giving equal prot, incl equal rt to use pub ways

≠ 1985(3)

> within said State, Parish and City the equal protection of the laws, including the equal right of all the citizens to use the public ways of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, in a normal, peaceful and customary manner, all of which is in violation of the provisions of Title 42, Section 1985(3) of U. S. Code Annotated."

The plaintiffs assert jurisdiction under 28 U.S.C.A. 1332, the diversity statute, and 28 U.S.C.A. 1343, providing for jurisdiction of "any civil action authorized by law to be commenced by any person . . . because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42. . . ."

The defendants, in their answer, admit the plaintiffs' jurisdictional allegations and, in addition, invoke jurisdiction on their own behalf under 28 U.S.C.A. 1331, the federal question statute, 42 U.S.C.A. 1983, 42 U.S.C.A. 1981 and 28 U.S.C.A. 2281. In a counterclaim, they urge that their activities were protected under the First and Fourteenth Amendments and ask that the plaintiffs be enjoined from interfering with their constitutional rights of freedom of speech and freedom of assembly.

The trial judge found that the plaintiffs were entitled to injunctive relief and issued a sweeping permanent injunction restraining "the Congress of Racial Equality, and John Doe and Mary Doe and each of them and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them from . . . financing, sponsoring, encouraging or engaging in meetings or any other activities whereby violations are suggested, advocated or encouraged."[1] The defendants appeal, urging, among other contentions, that the injunction is so broad as to abridge, by prior restraints, their freedom of speech. We do not reach that issue. We reverse the case with directions to dismiss for failure of the plaintiffs to show a federal cause of action upon which relief may be granted.

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[1] The judgment provides, in pertinent part:
"ORDERED, ADJUDGED AND DECREED that the preliminary injunction heretofore granted and issued by this Court herein on the 4th day of January, 1962, and entered in the office of the Clerk of this Court on the 4th day of January, 1962, be and the same hereby is made perpetual and permanent to the extent set forth below, and that the defendant corporation, Congress of Racial Equality and John Doe and Mary Doe and each of them and their officers, agents, servants, employees and attorneys, and those persons in active concert or participation with them, be permanently and perpetually enjoined and restrained from financing, sponsoring, encouraging, or engaging in meetings or any other activities whereby violations of existing State or Federal laws are suggested, advocated, or encouraged; from financing, sponsoring, encouraging, or engaging in meetings whereby the public ways, streets, sidewalks, or highways, of the City of Baton Rouge, or the Parish of East Baton Rouge, are blocked, or the unimpaired use thereof denied to other traffic; from financing, sponsoring, encouraging, or engaging in meetings or any other activities wherein or whereby disobedience to the lawful orders of properly constituted law enforcing agencies and their personnel is advocated, suggested or encouraged; from financing, sponsoring, encouraging, or engaging in meetings or any other activities designed or held for the purpose of impeding or obstructing the administration of justice or the orderly functions of government; and from financing, sponsoring, or encouraging, or engaging in any activities designed to, or which do, impede, hinder, or obstruct officers of the law, or officials of the Parish of East Baton Rouge, or the City of Baton Rouge, from performing and discharging the duties of their respective offices." (Record, pp. 365, 366)

I.

There is clearly no diversity jurisdiction. 28 U.S.C.A. 1332 stipulates that

> "The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—(1) citizens of different states . . . ."

In the first place, the complaint fails to allege the jurisdictional amount. The trial judge stated that the court had jurisdiction under section 1332, but he made no finding that the matter in controversy exceeded $10,000. In oral argument counsel for the appellees suggested we take judicial notice of the fact that demonstrations by 2,000 Negroes likely to result in violence would cause property damage in excess of the jurisdictional amount. Even if we should follow this suggestion, we should have to hold that the plaintiffs failed to make a sufficient showing of diversity of citizenship between the parties to support jurisdiction.

The complaint states that the defendants are "the Congress of Racial Equality, a corporation incorporated under the laws of the State of New York, and John Doe and Mary Doe, whose exact names and addresses are unknown to the plaintiffs, but who are citizens of the United States and *non-residents of the State* of

Louisiana." This allegation will not support the trial court's jurisdiction. Diversity of *citizenship,* not of *residence,* is required under 28 U.S.C.A. 1332. "Whereever jurisdiction is predicated upon the citizenship (or alienage) of the parties, it should be noted that since residence is not the equivalent of citizenship, an allegation that a party is a resident of a certain state or foreign country is not a sufficient allegation of his citizenship." 2 Moore, Federal Practice ¶8.10, p. 1636 (2d Ed.). "Residence alone is not the equivalent of citizenship, although the place of residence is prima facie the domicile." *Stine v. Moore,* 5 Cir. 1954, 213 F.2d 446. See *Neel v. Pennsylvania Company,* 1895, 157 U. S. 153, 15 S. Ct. 589, 39 L. Ed. 654; *Realty Holding Company v. Donaldson,* 1925, 268 U. S. 398, 45 S. Ct. 521, 69 L. Ed. 1014; *Texaco-Cities Service Pipeline Co. v. Aetna Casualty & Surety Company,* 7 Cir. 1960, 283 F.2d 144. Here, the record, far from showing that the defendants were citizens of other states, indicates that the great majority of the demonstrators covered by the injunction were citizens of Louisiana. They were college students enrolled in a Louisiana Negro university. There is no basis therefore for the district court's assuming jurisdiction under 28 U.S.C.A. 1332.

II.

In addition to holding that there was diversity jurisdiction, the district court found that there was federal question jurisdiction under 28 U.S.C.A. 1331 and 42 U.S.C.A. 1985. Under Section 1331 district courts have "jurisdiction of all civil actions where the matter . . . arises under the Constitution, laws or treaties of the United States." The matter in controversy, however, must exceed $10,000. Since there is no allegation in the complaint as to the amount in controversy and nothing to indicate that the amount exceeds $10,000, the relevant jurisdictional statute is 28 U.S.C.A. 1343. Section 1343 has no reference to jurisdictional amount. This statute is one of the Civil Rights Acts adopted shortly after the Civil War in order to provide a federal forum for the protection of federally-granted rights under the Thirteenth, Fourteenth and Fifteenth Amendments. Subparagraphs (1) and (2) vest jurisdiction in district courts of civil actions to recover damages resulting from the conspiracies to interfere with civil rights referred to in Section 1985 of Title 42. Subparagraphs (3) and (4) allow actions in the district courts:

> "(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;
>
> (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

Dist Ct
error

28 u.s.c. 1343(4)

Section 1985(3) limits the conspiracy to one in which

> "two or more persons . . . conspire . . . for the purpose of depriving . . . persons of the equal protection of the laws."

The complaint alleges:

> "[The defendants] are sponsoring, financing and encouraging John Doe and Mary Doe and others . . . to foment violence, to provoke breaches of the peace and other law violations, . . . and are encouraging others to conspire with them to violate the laws of the State of Louisiana and of the United States . . . depriving plaintiffs as individual citizens of the State of Louisiana and of the United States of America of their civil rights . . . [The defendants] hinder plaintiffs in their official capacities as constituted authorities of the Parish of East Baton Rouge, Louisiana, and of the State of Louisiana, and of the City of Baton Rouge, Louisiana, from giving or securing to all persons within said State, Parish and City the equal protection of the laws, including the equal right of all the citizens to use the public ways of the City of Baton Rouge, Parish of East Baton Rouge, State of Louisiana, in a normal, peaceful and customary manner, all of which is in violation of the provisions of Title 42, Section 1985(3) of U. S. Code Annotated."

Very clearly, therefore, the plaintiffs have *attempted* to state a federally-granted right based on Sections 1343 and 1985(3).

A distinction must be drawn between the question of federal jurisdiction and the question of the sufficiency of the complaint (and the evidence) to show a cause of action arising under the Constitution and laws of the United States. The Supreme Court's analysis of federal question jurisdiction in *Bell v. Hood,* 1946, 327 U. S. 678, 66 S. Ct. 773, 90 L. Ed. 939, supports the view that the complaint in this case, as drafted, states an action created or arising under the Civil Rights statutes enacted to carry out the Fourteenth Amendment. The district court therefore had jurisdiction, even if the case should be dismissed for failure of the plaintiffs to show a cause of action under the federal statutes on which the plaintiffs rely. In *Bell v. Hood* the plaintiffs alleged that certain F.B.I. agents had imprisoned them and made an illegal search and seizure of their premises in contravention of the Fourth and Fifth Amendments, and they sought damages from the individuals solely on the basis of their constitutional rights. The Supreme Court stated:

> "Whether or not the complaint as drafted states a common law action in trespass made actionable by state law, it is clear from the way it was drawn that petitioners seek recovery squarely on the ground that respondents violated the Fourth and Fifth Amendments. It charges that the respondents conspired to do acts prohibited by these amend-

1343 - juris over action under Act protecting civil rts
1985(3) - conspiracy to deprive of equal protection
Comp - hinders Ts fm giving eq prot, incl eq rt to use pub ways

> ments and alleges that respondents' conduct pursuant to the conspiracy resulted in damages in excess of $3,000. It cannot be doubted therefore that it was the pleaders' purpose to make violation of these Constitutional provisions the basis of this suit. Before deciding that there is no jurisdiction, the district court must look to the way the complaint is drawn to see if it is drawn so as to claim a right to recover under the Constitution and laws of the United States. . . . [W]here the complaint, as here, is so drawn as to seek recovery directly under the Constitution or laws of the United States, the federal court, but for two possible exceptions later noted, must entertain the suit." 327 U. S. at 681-82

– juris

Upon the remand in *Bell v. Hood* the district court dismissed the complaint for failure to state a claim upon which relief could be granted, "being of the opinion that neither the Constitution nor the statutes of the United States give rise to any cause of action in favor of plaintiffs upon the facts alleged." *Bell v. Hood,* S.D.Cal. 1947, 71 F. Supp. 813, 820.

The holding in *Mitchell v. Greenough,* 9 Cir. 1938, 100 F.2d 184, *cert. den'd* 1939, 306 U. S. 659, 59 S. Ct. 788, 83 L. Ed. 1056 is apposite here. In that case the question was whether a conspiracy to convict the plaintiff of a crime through perjured testimony, thereby resulting in his disbarment, was "a conspiracy for the purpose of impeding the due course of justice in an attempt to 'deny to any citizen the equal protection of the laws.'" The court held that since the only claim stated was one under a federal statute, the district court "had jurisdiction to decide that the plaintiff had failed to state a cause of action under that statute." When it reached this point, the Court held that the right to practice law in a state is not a federally protected right and that no purpose to deprive the plaintiff of equal protection was shown.

III.

Mitchell v. Greenough brings us to the question whether the plaintiffs stated and made a showing of a federally-granted cause of action. We reach the same result the Ninth Circuit reached in *Mitchell v. Greenough.*

Section 1985(3) provides:

> "If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the *purpose of depriving,* either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or *for the purpose of* preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws . . . [and] if one or more persons engaged therein do, or cause to be done,

but not [illegible] [illegible]?

> any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators."

A. Section 1985(3) states plainly that the conspiracies in question must be "for the purpose of depriving" persons of Fourteenth Amendment rights. The courts have not whittled away this requirement. Thus, the Supreme Court has said that there must be ''intentional or purposeful discrimination between persons or classes". *Snowden v. Hughes,* 1944, 321 U. S. 1, 64 S. Ct. 397, 88 L. Ed. 497. "[T]he Act defines conspiracies of a very limited character. They must, we repeat, be 'for the purpose of *depriving* . . . of the *equal protection of the laws,* or of *equal privileges and immunities under the laws*". (Italics supplied by the Supreme Court.) *Collins v. Hardyman,* 1951, 341 U. S. 651, 660, 71 S. Ct. 937, 95 L. Ed. 1253.

There is nothing in the complaint and nothing in the record to show purpose on the part of the defendants to deprive anyone of equal protection of the laws. On the contrary, the whole object of the demonstration was to secure equal protection of the laws for all. At most, the plaintiffs alleged and proved that the defendants blocked traffic (for a short while) and that the Baton Rouge officials called a large number of police to the Courthouse, reducing police protection in other parts of the City. A similar situation exists every year at Mardi Gras. But no one would suggest that the crowds on Canal Street and the consequent reduced police protection in New Orleans give rise to actions under Section 1985(3). The Negro march and demonstration in Baton Rouge on December 15, 1961, Carnival parades in New Orleans, and St. Patrick's Day parades in New York produce similar effects. The inconvenience and even damage they may cause some citizens, because of diminished police *protection,* provide no basis for constructing out of thin air a purpose to deprive others of their right to equal *protection* of the laws. The contention has the earmarks of a bad pun.

In *Collins v. Hardyman,* the evidence showed that the defendants broke up the plaintiffs' meeting and did not break up meetings of others with whose sentiments they agreed. As Mr. Justice Jackson, for the Court, said:

> "To be sure, this is not equal injury, but it is no more a deprivation of 'equal protection' or of 'equal privileges and immunities' than it would be for one to assault one neighbor without assaulting them all, or to libel some persons without mention of others. Such private discrimination is not inequality before the law unless there is some manipulation of the law or its agencies to give sanction or sanctuary for doing so. Plaintiffs' rights were

> certainly invaded, disregarded and lawlessly violated, but neither their rights nor their equality of rights under the law have been, or were intended to be, denied or impaired. Their rights *under the laws and to protection of the laws* remain untouched and equal to the rights of every other Californian, and may be vindicated in the same way and with the same effect as those of any other citizen who suffers violence at the hands of a mob."

The instant case is stronger than *Collins v. Hardyman.* In both cases the defendants were private persons, but in *Collins v. Hardyman* there was no doubt that the plaintiffs' rights were "lawlessly violated". Here we have a different story. Further, freedom of speech and freedom of peaceable assembly are in the balance. In both cases, however, as the Supreme Court said in *Collins v. Hardyman:*

> "What we have here is not a conspiracy to affect in any way these plaintiffs' equality of protection by the law, or their equality of privileges and immunities under the law."

The absence of a purpose on the part of the defendants to deprive anyone of rights to equal protection of the laws distinguishes this case from *Brewer v. Hoxie School District,* 8 Cir. 1956, 238 F.2d 91. In *Brewer v. Hoxie,* an Arkansas school district, which had desegregated, was forced to close its schools because of the activities of the defendants, who had engaged in a campaign of violence and intimidation.

The school district, its directors, and superintendent obtained an injunction in the federal district court against the White Citizens Council and other organizations and individuals from continuing interference with their desegregation efforts. On appeal, the Eighth Circuit refused to order the action dismissed. In the Arkansas case the defendants made no bones about their purpose. Their avowed object was to close the Hoxie School in order to deprive the Negro children of their right, under the Equal Protection Clause, to attend a desegregated school. Here, unlike *Brewer v. Hoxie,* there is no allegation in the complaint and no evidence to suggest that the defendants *purposefully* deprived others of their right to equal protection of the laws.

no intent to deprive the

B. The plaintiffs' case is fatally defective for another reason: they were deprived of no *federal* rights. Blocked traffic inconvenienced some citizens. Diminished police protection was a hazard to some citizens. But this does mean that the rights adversely affected were federal rights.

deprived of no federal right

In *Milles v. Armstrong,* 7 Cir. 1953, 207 F.2d 284, the Court held that an aggravated assault upon the plaintiff and the wanton destruction of his property did not affect the privileges and immunities incident to United States citizenship. The Court stated:

> "[T]o be valid the act must be held to apply only to deprivation of federal rights. If it be so construed as to include deprivation of purely

> state rights, it would not seem to be within the Constitution."

Love v. Chandler, 8 Cir. 1942, 124 F.2d 785 was a suit for damages against Federal and State officials and private persons for conspiracy to prevent the plaintiff from obtaining employment with the Works Progress Administration. The court dismissed the action on the ground that the right to employment was not a federally created right. In *Ferrer v. Fronton Exhibition Co.*, 5 Cir. 1951, 188 F.2d 954, this Court dismissed a suit charging conspiracy to import alien contract labor, contrary to a federal statute, thereby depriving plaintiff of employment, on the ground that there was no federal right involved. *Downie v. Powers*, 10 Cir. 1951, 193 F.2d 760, is closely analogous to the instant case. The plaintiff sued city officials and individuals alleging that the defendants, private persons, had broken up a meeting of Jehovah's Witnesses by violence and that the city officials had failed to protect the plaintiffs against such action. The trial court instructed the jury that Section 1985(3) required proof of a conspiracy involving the city officials. The Court of Appeals upheld the instructions but reversed for other errors.

read

If the defendants impaired any right of the plaintiffs, it was the right to police protection. This right is derived from the State, not the Federal Government. Private citizens deprived of such a right by other private citizens have not been deprived of a federally-granted right, giving rise to an action based on the Constitution and laws of United States.

We do not consider the constitutional question whether Congress would have the power to enact a statute to prohibit conspiracies having the purpose of depriving citizens of rights arising under state laws. We point out, however, as the Supreme Court did in *Collins v. Hardyman,* that to construe Section 1985(3) as applicable to state-granted rights would raise a serious constitutional question.

C. A third fatal weakness in the plaintiffs' case is that the defendants are private persons. It is still the law that the Fourteenth Amendment and the statutes enacted pursuant to it, including 42 U.S.C.A. 1985, apply only when there is state action. *Collins v. Hardyman,* 1951, 341 U. S. 651, 71 S. Ct. 937, 95 L. Ed. 1253; Civil Rights Cases, 1883, 109 U. S. 3, 27 L. Ed. 835; *United States v. Harris,* 1883, 109 U. S. 629, 1 S. Ct. 601, 27 L. Ed. 290. As the Court said in the *Civil Rights Cases:*

14th applies only to [illegible] the State

> "It is state action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the Amendment. It has a deeper and broader scope. It nullifies and makes void all state legislation, and state action of every kind, which impairs the privileges and immunities of citizens of the United States or which injures them in life, liberty, or property without due process of law, or which denies to any of them the equal protection of the laws." Civil Rights Cases, 1883, 109 U. S. 3, 27 L. Ed. 835.

The Supreme Court recently reasserted this restriction upon the scope of the Fourteenth Amendment in *Peterson v. City of Greenville,* 1963, 373 U. S. 244, 247, S.Ct. , L.Ed.2d .

There are two major exceptions to this principle. As pointed out in *Collins v. Hardyman,* one exception is a massive conspiracy such as the Klan in Reconstruction days, "so farflung and embracing such members . . . [as] to deprive Negroes of their legal rights and to close all avenues of redress or vindication". 341 U. S. at 662. The other exception applies when private persons take over governmental functions. *Smith v. Allwright,* 1944, 321 U. S. 649, 64 S. Ct. 757, 88 L. Ed. 987; *Rice v. Elmore,* 4 Cir. 1947, 165 F.2d 387, *cert. den'd* 1948, 333 U. S. 875; *Baskin v. Brown,* 4 Cir. 1949, 174 F.2d 391; *March v. Alabama,* , 326 U. S. 501, 66 S. Ct. 276, 90 L. Ed. 265. Neither exception applies to the case before us.

The plaintiffs, relying on *Brewer v. Hoxie School District,* 8 Cir. 1956, 238 F.2d 81, argue: the law enforcement officials of Baton Rouge have a constitutionally imposed duty to accord equal protection of the law to all persons; the defendants interfered with the officials' performance of that duty. causing the local officials to deprive others of equal law enforcement; this constituted state action. As we have pointed out, *Brewer v. Hoxie* is distinguishable because of the purposeful deprivation of civil rights. That case bears only a superficial resemblance to the instant case. The action enjoined in *Brewer v. Hoxie* was one step removed from action by state officials; the action sought to be reached here cannot possibly be contorted into state action. In any event the Supreme Court has spoken expressly in *Collins v. Hardyman*: the Civil Rights Acts apply only to state action.

In sum, (1) the plaintiffs have failed to state or to show that the defendants conspired *purposefully* to deprive others of equal protection of the laws, as required by Section 1985(3); (2) there is no federal right in the city officials, individually or on behalf of the Baton Rouge citizenry, to be protected in the performance of their municipal duties, as 28 U.S.C.A. 1331 requires of an action arising under the Constitution and laws of the United States; and (3) there is no state action here such as is necessary to support a suit invoking the Fourteenth Amendment and statutes enacted to enforce that amendment.

Since there is neither diversity of jurisdiction nor a federal claim, the action is REVERSED and REMANDED with directions to the district court to dissolve the injunction and to dismiss the complaint forthwith.[2]

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[2] In Kelley v. Page, No. , of the Docket of this Court, City Officials of Albany obtained an "injunctive order", similar to the order in the instant case, against M. S. Page, Dr. W. G. Anderson, Slater King, Charles Jones, Reverend Martin Luther King, Jr., Reverend Ralph Abernathy, Reverend Wyatt Tee Walker, Mrs. Ruby Hurley, Congress of Racial Equality, Southern Christian Leadership Conference, Student Non-Violence Coordinating Committee, The National Association For The Advancement Of Colored People, and the Albany movement and other persons whose names are unknown and who are acting in concert with them. On motion of the defendants, the Honorable Elbert P. Tuttle, Chief Judge, set aside the order as "null and void". Judge Tuttle's order states: "On the merits of the motion the defendants contend that the complaint filed in the District Court

GEWIN, Circuit Judge, Concurring Specially:

I concur in the result reached. In my opinion neither the complaint nor the proof sustain federal jurisdiction. If the principles affirmed in *Brewer, et al. v. Hoxie School Board District, etc., et al.,* 8 Cir. 1956, 238 F.2d 91, could be sustained when measured by *Collins, et al. v. Hardyman, et al.,* 341 U.S. 651, 95 L.Ed. 1253, it is my opinion that federal jurisdiction could not be sustained under the *Brewer* case. On the question of diversity the instant case is clearly distinguishable from our recent case of *The Congress of Racial Equality, et al. v. Douglas,* 5 Cir. 1963, 318 F.2d 95, wherein it was held:

> "Jurisdiction was vested in the district court by way of 28 U.S.C. § 1332, diversity of citizenship, the Congress of Racial Equality being incorporated in the state of New York, and all plaintiffs being citizens of the state of Mississippi."

I would emphasize the statement contained in the opinion of the majority, "Moreover, this unusual federal

---

asserts federal jurisdiction only under the several Civil Rights Acts, which in turn are based upon Section 1 of the Fourteenth Amendment to the Constitution of the United States. This is conceded by the plaintiffs. ¶ It being clear that the Supreme Court of the United States has held that the Civil Rights Acts do not encompass actions of the kind described in the complaint, see Collins v. Hardyman, 341 U. S. 651 and Screws v. United States, 325 U. S. 91, I am convinced that the trial court was without jurisdiction to entertain this suit. This being so, I am of the opinion that the injunctive order was null and void." In Congress of Racial Equality v. Douglas, 5 Cir. 1963, F.2d , in which the district court enjoined CORE and certain private persons on the suit of the City of McComb, Mississippi, the Court did not find it necessary to discuss jurisdiction.

Cameron?

action is in an area that is essentially one of state responsibility—the preservation of public order;...", but I would not limit the State to breach of peace statutes in the choice and enforcement of a remedy. The circumstances revealed by the record in this case may authorize action under statutes other than "breach of peace statutes". As stated in *Collins v. Hardyman,* "[Louisiana] courts are open to plaintiffs and its laws offer redress for their injury and vindication for their rights."

In my judgment, the record does not support the statement in the majority opinion that ". . .the whole object of the demonstration was to secure equal protection of the laws for all." More than a mere demonstration took place. In the circumstances here present, municipal officials, police officers and others charged with the preservation of law and order must have the assistance of the courts, and this case is an example where state court action is highly appropriate. Once State Court jurisdiction has been invoked, Federal Courts should abstain from taking action, even if Federally protected rights become involved ultimately. *Burford v. Sun Oil Company,* 319 U.S. 315, 87 L. Ed. 1424.

Adm. Office, U. S. Courts—E. S. Upton Printing Co., N. O., La.

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IN THE

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 19,703

CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,
Appellants,

VERSUS

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN,
the latter in his official capacity as Mayor-
President of the City of Baton Rouge, Louisiana,
Appellees.

MOTION TO STAY THE MANDATE

TO THE HONORABLE UNITED STATES COURT OF APPEALS, FIFTH CIRCUIT:

1.

Appellees above named respectfully move this Honorable Court to stay the mandate in the above entitled action and not permit the same to be issued out of said cause until the further order of the Court on the ground and for the reason that appellees expect and intend, in good faith, within the time allowed by law, to apply to the Supreme Court of the United States of America by petition for a review on writ of certiorari of the decision and judgment rendered in favor of appellant and against appellees in the above entitled action.

2.

Appellees further show to the Court that they are ready, able and willing to make a good and sufficient bond, conditioned as provided by law, in said cause.

WHEREFORE, appellees pray that this Honorable Court make and enter an appropriate order herein staying the issuance of the mandate in the above entitled action until further order of the Court, and that the Court fix the amount of the bond required of appellees for this purpose, and that they be given a reasonable time within which to make, execute and file said bond.

R. GORDON KEAN, JR., Parish Attorney
JOHN V. PARKER, Assistant Parish Attorney
SARGENT PITCHER, District Attorney
JOHN F. WARD, JR., Assistant District Attorney

By:

R. Gordon Kean, Jr., Parish Attorney

John V. Parker

John V. Parker, Assistant Parish Attorney

STATE OF LOUISIANA
PARISH OF EAST BATON ROUGE

R. GORDON KEAN, JR., being duly sworn, deposes and says:

That he is one of the attorneys of record for the appellees in the above entitled action; that he served a copy of the above and foregoing motion upon appellants by mailing same to Carl Rachlin and Stephen C. Vladeck, Counsel for appellants; said copy being mailed to counsel at their office 280 Broadway, New York 7, New York, by regular U.S. Mail with the postage duly paid thereon, the same having been deposited in the post office at Baton Rouge, Louisiana, this 23rd day of October, 1963.

R. Gordon Kean, Jr.

Sworn to before me, the undersigned Notary Public, this 23rd day of October, 1963, at Baton Rouge, Louisiana.

John V. Parker

Notary Public

IN THE

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

No. 19,703

CONGRESS ON RACIAL EQUALITY, JOHN DOE and MARY DOE,
Appellants,

VERSUS

BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN,
the latter in his official capacity as Mayor-
President of the City of Baton Rouge, Louisiana,
Appellees.

ORDER
STAYING MANDATE

This cause came on to be heard on the motion of appellees for stay of the mandate herein.

On consideration whereof, it is now here ordered that no mandate of this Court issue herein for a period of _______ days from this date, and that, if within the period of _____ days there is filed with the clerk of this court a certificate of the clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, with proof of service thereof under section 3 of Rule 38 of the Supreme Court, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

____
Judge
United States Court of Appeals
Fifth Circuit

"Times Picayune"
New Orleans.
12/12/62

COURT STUDIES CORE APPEALS

Group Seeks Overturn of Two Injunctions

The United States fifth circuit court of appeals heard arguments Tuesday and then took under advisement two appeals by the Congress on Racial Equality from district court injunctions issued as a result of anti-segregation demonstrations.

One appeal is from an injunction issued by Federal Judge E. Gordon West in Baton Rouge after between 1500 and 2000 Negroes were dispersed in Baton Rouge by police using tear gas Dec. 15, 1961.

The Negroes had gathered at Scotlandville and marched into the heart of Baton Rouge to demonstrate against the prior arrest of Negroes picketing Baton Rouge businesses.

Judge West enjoined CORE from "financing, sponsoring, encouraging, or engaging in meetings or any other activities whereby violations of existing state or federal laws are suggested, advocated, or encouraged."

VIOLENCE DENIED

Carl Rachlin, New York attorney for CORE, argued that there was "not one shred of evidence of violence in the demonstration" and that the only violence was on the part of the police when they used the tear gas.

He told the court that the tear gas was used when the Negro minister who led the demonstration told the crowd "the time has come, let's go eat lunch," and then mentioned the names of several white restaurants in Baton Rouge.

Rachlin said that police had been assured by the minister that the mass meeting would only be for the purpose of pledging allegiance to the flag, saying a few prayers, and listening to a speech.

R. Gordon Kean Jr., East Baton Rouge parish attorney, told the court that Baton Rouge police did not know whether the Negroes had come to take over the court house or the state capitol and "had to play it by ear."

He claimed that the marchers completely blocked the highway through Scotlandville and refused to clear it for traffic. "They clearly conspired to take over the streets of Baton Rouge and ignored the orders of all but their chosen leader," he asserted.

In the other case argued before the appeals court CORE asked that a similar injunction issued by Federal Judge Harold Cox Dec. 7, 1961, after freedom riders sought to test the ordered desegregation of the Greyhound bus terminal in McComb, Miss.

A special three-judge federal court had previously ordered th terminal desegregated.

Rachlin argued that CORE re resentatives who arrived on buses to test the desegregation arrived with peaceful intentions but were beaten by white persons.

Charles Clark, special assistant attorney general for the state of Mississippi, claimed that poli were doing all in their power prevent violence after three cessive days of riots.

JAIL BRUTALITY CLAIM PROBED

"Times Picayune"
New Orleans

Baton Rouge Sheriff Denies Allegations

1/6/62

BATON ROUGE, La. (AP) — The FBI Friday began investigating a complaint that three Negroes who led demonstrations against racial discrimination here were beaten while held in the East Baton Rouge parish jail.

H. G. Maynor, special agent in charge of the FBI at New Orleans, said agents were conducting the investigation at specific request of Atty. Gen. Robert Kennedy.

Rev. B. Elton Cox, field secretary for the Congress of Racial Equality, requested the probe in a telegram to the department of justice in Washington.

Sheriff Bryan Clemmons retorted the complaint by the Negro minister was "just another attempt by CORE . . . to get cheap publicity without regard to the rights of others.

'We have nothing to hide," Clemmons said. "We are glad to have the FBI or anybody else check us at any time."

"I completely deny," Clemmons said, "any allegations by Rev. Cox or any other members of CORE of any brutality whatsoever."

Cox said the worst beaten of the three was Jerome Smith, chairman of the CORE unit at New Orleans, who was taken to a New Orleans hospital for treatment. White mobs also beat Smith at McComb a few weeks ago when Negroes were attempting to crack bus station segregation barriers there.

Cox said other CORE officers beaten in jail were David Dennis, regional officer of Shreveport, and Ronnie Moore, chairman of the Baton Rouge unit.

Cox offered to give dates and description of the beatings to local FBI agents. After sending the telegram, Cox said he contacted the FBI here. He later told newsmen of the move.

He declined to name the sheriff's deputies involved. The FBI declined further comment.

The beatings, Cox said, took place Jan. 1-2.

Coroner Chester Williams said he examined Moore Wednesday morning and "asked him what was his trouble. He didn't say what his trouble was . . . he had been coughing up blood."

The coroner said Moore didn't say anything about being hit. He said Moore told him he had coughed up blood before he was brought to jail.

Williams said Moore had a cold and the blood apparently came from his nasal passage and the Negro was spitting it up.

Cox said CORE plans to continue obeying a federal court restraining order against further demonstrations until it is lifted, but afterward "we might continue protests against racial discrimination in the city and parish."

/

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-3670

December 21, 1961

Carl Rachlin Esq.
280 Broadway
New York, New York

Dear Carl:

This has been a very hectic week for us, in addition to the Baton Rouge situation,we had 292 arrests here. These persons were charged with participating in a march without a permit. The maximum penalty is $100.00 and/or 90 days.

Unfortunately the majority of people wanted immediate release. This resulted in our working until 3:30 A.M. Tuesday.

We appeared in court yesterday and presented a hastily prepared Motion to Quash which was summarily denied. At this point we reserved the necessary bill and announced that we were ready for trial. The judge then informed us that he could not try all of the cases because of space limitations. Therefore the people were divided into groups of 100 all to be tried on January 5, 1962 at 9:00 A.M., 1:00 P.M. and 4:00 P.M.

We were able to gain one concession; that is getting the bond set at $100.00 per person and getting permission to sign each bond which means we are on the hook for $29,200.00. Our bondsman was a little disappointed in losing $2,900.00 worth of business.

Our strategy is to require identification of each defendant which of course is impossible for the prosecution to do. Incidentally Judge Bucaro is the same judge who went into a legal tirade concerning anarchy when he sent Frank Nelson to the House of Detention for 90 days. We further intend to separate the leaders from students thus insuring moderation as to the students and at the same time creating the legal argument that you can't make fish of one and fowl of the other.

We are enclosing a copy of the T.R.O's against us in Baton Rouge and at the same time we are requesting you to immediately send to us your memorandum in the McComb Mississippi case involving essentially the same point.

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-3670

We are submitting herewith a bill for $584.00 which was based on (1) Paroling all defendants (2) arraignment, motion and plea (3) Bonding all defendants our and (4) Conducting the defense in 3 separate trials all of which involved my 2 partners and myself. The fee is further necessitated by the fact that we have been engaging in C.O.R.E's litigation almost to the exclusion of our private practice.

With warm personal regards,

COLLINS, DOUGLAS & ELIE
BY Robert F. Collins

RFC/aem
Enclosure

CC: Mr. Marvin Rich
38 Park Row
New York, New York

CHARLES R. OLDHAM
ATTORNEY AT LAW
722 CHESTNUT - ROOM 218
ST. LOUIS 1, MISSOURI
CHESTNUT 1-5088

July 18, 1962

Carl Rachlin
Attorney at Law
280 Broadway
New York, New York

Dear Carl:

Received your brief in the case of CORE vs. Clemmons, et al. It is an excellent brief.

The only criticism I have involves the printing wherein Negro has graduated from a capital "N" to a small "N". Maybe your printer should be instructed in regard to this area.

Very truly yours,

Charles R. Oldham

Charles R. Oldham

CRO:lfb

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Good Brief

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WESTERN UNION
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W. P. MARSHALL, PRESIDENT

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ATTORNEY CARL RACHLIN
280 BROADWAY NYK

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WITH REFERENCE TO TENTATIVE APPOINTMENT MADE FOR NEXT WEEK AM ADVISING THAT WILL HAVE TO RESCHEDULE SAME FOR LATER DATE ASCRIBABLE TO CIRCUMSTANCES WHICH HAVE BEEN PRESENTED TO ME ONLY TODAY. IN MEANTIME POSSIBLE ON MY NEXT TRIP EAST I MIGHT BE ABLE TO SEE YOU ALTHOUGH CANNOT MAKE DEFINITE COMMITMENT SPECIFICALLY JUST NOW. REGRET THESE CIRCUMSTANCES BUT THEY WERE BEYOND MY CONTROL

F G CLARK SOUTHERN UNIVERSITY.

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stores (which will involve arrests of participants).

As you can very well see, these activities would definitely be in defiance of the injunctions.

We would appreciate it if we could receive an immediate response - preferably before September 19 - as this is the last day for registration at LSU.

Until then, I remain

Yours for Freedom,

Patricia Ann Tate

Patricia Ann Tate, Chairman
Baton Rouge CORE

cc: Mr. James McCain
Congress of Racial Equality
38 Park Row
New York 38, New York

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Patricia Ann Tate

Patricia Ann Tate, Chairman
Baton Rouge CORE

cc: Mr. James McCain
Congress of Racial Equality
38 Park Row
New York 38, New York

September 24, 1962

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Miss Patricia Tate
Baton Rouge CORE
P.O. Box 4926, Louise Street Station
Baton Rouge, Louisiana

Dear Pat:

I've been considering your recent letter and have made some communications with various people across the country. It is our considered opinion that there are many things which can be done by Baton Rouge CORE which would not involve violation of the injunction.

As you know, the integration of the restaurants in New Orleans has gone very well. There has been no major difficulty and the national chain managements involved are quite pleased. They will make no promises about Baton Rouge. However, there are some indications that efforts on your part to begin negotiations should be made. This last should be confidental and should not be known in the community at this point. Later there will be an opportunity to draw in a wider portion of the community.

This means that the group should organize itself as solidly as possible, hold workshops with particular emphasis on negotiations, and make some effort to secure negotiations with the managers of the national variety store chains. Please send me carbons of any letters you write.

There's also no reason at all why the CORE group cannot address the membership of local churches, civic groups and others. You could very well point out the changes which have been made in New Orleans which could equally well be made in Baton Rouge. You could also point out that these chains exist in Baton Rouge at the sufferance of the local population and that if Negroes were to stop buying it would have a significant effect. This effort should be quite widespread.

There are other things that you can do. Many of them will occur to you. Please keep in close touch.

Cordially,

Marvin Rich

MR/jb

September [illegible]

Miss Patricia Ann Tate
P. O. Box 4936 - Louise Street Station
Baton Rouge, Louisiana

Dear Patricia:

I have been advised that questions are being asked as to the interpretation of the injunction issued by Judge Gordon West in Baton Rouge.

Before I say a few words about the injunction, please be advised that the briefs have been filed by both ourselves and the State of Louisiana and argument will come in due course. Lolis Elie and I are investigating the possibility of speedy action on the argument of the injunction. We will do everything possible to hasten the hearing.

One of the reasons that we have not tried as was done in Albany, Georgia, to ask Judge Tuttle to vacate the order of Judge West pending the appeal, was because unlike the Albany, Georgia situation, Louisiana had obtained similar State Court injunctions which have been held in abeyance while this case was going through the Courts. If we had knocked out Judge West's order, we would have still had on our shoulders the State Court orders. I am sure that Lolis or I will explain this to you in more detail when we see you, I trust very soon.

As members of the Bar and as such representatives of the Court, we cannot and do not advise you to disobey any injunction. This would be contemptuous on our part. We can, however, give you a reasonable interpretation as to what the order and injunction means and what kind of things you can do without violating the injunction. Understanding, of course, that if Judge West should find that you have violated the injunction, penalties for contempt might follow. Of course, as we urge in our appeal, the injunction in places is so generally worded that it is difficult to ascertain the true meaning. It is our belief that you may conduct negotiations with employers, retail establishments and the like, without any fear lation of the injunction.

It is also our belief that one or two people may distribute leaflets on particular subjects without violating the injunction; though, I suggest that before leaflets are distributed you consult with Lolis Elie and myself as to the wording. You may engage in all kinds of activities providing that you do not violate the law. For example, as you know, we are testing in the United States Supreme Court, Rudy Lombard's sit-in in McCrory's store in New Orleans. Until the United States Supreme Court rules on this, it would be advisable that if you are asked to leave a counter that you do so. As I understand this injunction, however, I do not believe you would be violating it if you attempted to find out whether service was available at all kinds of eating establishments.

If there are any specific kinds of things that you have in mind, I would suggest that you consult with Lolis Elie and myself. It is my intention to come to Baton Rouge fairly soon in any event on business.

Sincerely yours,

CB:ar

CARL RACHLIN

cc: Ronnie Moore
Lolis Elie
James Farmer
Marvin Rich
Gordon Carey

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 23
NEW ORLEANS 6, LA.

RECEIVED
NOV 2
VLADECK & ELIAS

October 29, 1962

Messrs. Carl Rachlin and
Stephen C. Vladeck
Attorneys at Law
280 Broadway
New York 7, New York

Re: No. 19703 - Congress of Racial Equality, etc.
-vs- Bryan Clemmons, et al.
No. 19724 - Congress of Racial Equality, etc.
-vs- C. H. Douglas, et al.

Dear Sirs:

Your motion requesting the Court to hear the appeals in the referenced cases at the same time and place has been presented to the Court, and I am directed by the Court to advise that since the Houston calendar assigning case No. 19724 for hearing on November 14th had already issued before your motion was filed, the motion is denied without entry of any formal order.

Very truly yours,

E. W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

cc: Mr. Robert F. Collins
Messrs. R. Gordon Kean, Jr.,
and John V. Parker
Mr. John F. Ward, Jr.
Hon. Joe T. Patterson
Mr. Charles Clark
Mr. William A. Wiltshire
Mr. Derrick A. Bell, Jr.

cc.

December 1st, 1962

Hon. Edward W. Wadsworth, Clerk
United States Court of Appeals
Fifth Circuit
Post Office Box 23
New Orleans 6, La.

Re: No. 19732-Congress of Racial Equality, etc.
v. Bryan Clemmons, et al
No. 19734-Congress of Racial Equality, etc.
v. C. E. Douglas, et al

Dear Mr. Wadsworth:

I am afraid that we did not make our motion clear, for which I apologize.

It was not the purport of the motion to attempt to consolidate the two appeals. It was merely a request that both cases be heard on the same date before the Court, particularly since counsel will be coming a long distance to argue the matter before the Court. In other words, while it is true that there are similar issues raised in both cases, in large part the request was made for the convenience of counsel.

Your consideration in that regard would be most appreciated.

Respectfully yours,

CR:rb
cc: Mr. Robert F. Collins
Messrs. R. Gordon Kean, Jr.
and John V. Parker
Mr. John P. Hand, Jr.
Hon. Joe T. Patterson
Mr. Charles Clark
Mr. William A. Wilkinson
Mr. [illegible] A. Hall, Jr.

CARL RACHLIN

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

November 2, 1962

RECEIVED
NOV 5
VLADECK & ELIAS

Mr. Carl Rachlin
Attorney at Law
280 Broadway
New York 7, New York

Re: No. 19703 - Congress of Racial Equality, etc.
-vs- Bryan Clemmons, et al
No. 19724 - Congress of Racial Equality, etc.
-vs- C. H. Douglas, et al.

Dear Sir:

With reference to your letter of November 1st, I am authorized to advise that the Court fully understood your motion as a request that both cases be heard on the same date, but denied same, and I am not authorized to present your letter for a further ruling.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By ______________________
Deputy Clerk

GFG/bwc
cc: Mr. Robert F. Collins
Messrs. R. Gordon Kean, Jr. and
John V. Parker
Mr. John F. Ward, Jr.
Hon. Joe T. Patterson
Mr. Charles Clark
Mr. William A. Wiltshire
Mr. Derrick A. Bell, Jr.

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

September 13, 1963

RECEIVED
SEP 16 1963

Re: **No. 19703 - CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE -vs- BRYAN CLEMMONS, WINGATE WHITE and JOHN CHRISTIAN, the latter in his official capacity as Mayor-President of the City of Baton Rouge, Louisiana.**

Gentlemen:

Enclosed is a copy of the opinion this day rendered by the Court in the above case.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH
Clerk

Enc.

Mr. Robert F. Collins
Attorney at Law
New Orleans, Louisiana

Mr. Carl Rachlin
Attorney at Law
New York, New York

Mr. R. Gordon Kean, Jr.
Parish Attorney
Baton Rouge, Louisiana

Mr. John V. Parker
Parish Attorney
Baton Rouge, Louisiana

Mr. John F. Ward, Jr.
Assistant District Attorney
Baton Rouge, Louisiana

United States Court of Appeals

FIFTH CIRCUIT

RULE 29.

A petition for rehearing may be presented only within twenty-one days after entry of judgment (date opinion rendered), unless by special leave granted by the Court, or one of the Judges. Twenty copies must be filed, accompanied by proof of service. It must be printed and must briefly and distinctly state its grounds without argument, be supported by certificate of counsel to the effect that it is presented in good faith and not for delay, and if petitioner desires, he may file a written brief in support. The petition will not be granted or permitted to be argued unless a majority of the Court so determines.

****

COURT RULE

Rule 32

ISSUANCE OF MANDATE

Date of Issuance: The mandate of the court shall issue after twenty-one (21) days from the date of decision unless the time is shortened or enlarged by order. A certified copy of the judgment, and a copy of the opinion of the court, if any, where a new trial or further proceedings are to be had in the lower court, shall constitute the mandate, unless the court directs that a formal mandate issue. The timely filing of a petition for rehearing will stay the mandate until disposition of the petition unless otherwise ordered by the court. Unless otherwise ordered, if the petition is denied, the mandate shall issue after seven (7) days from entry of the order denying the petition.

A mandate once issued will not be recalled except by the court and to prevent injustice.

Adopted May 31st, 1963.

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

October 18, 1963

RECEIVED
OCT 21 1963
VLADECK & ELIAS

Re: No. 19703 - CONGRESS OF RACIAL EQUALTIY
, JOHN DOE and MARY DOE, v. BRYAN
CLEMMONS, ET AL

Gentlemen:

You are hereby advised that the Court has today entered an order denying the Petition for Rehearing in the above case. No opinion was rendered in connection therewith.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

Mr. Robert F. Collins
Attorney at law
New Orleans, La.

Mr. Carl Rachlin
Attorney at law
New York, N.Y1

Messrs. R. Gordon Kean, Jr., &
John V. Parker
Attorneys at law
Baton Rouge, La.

Mr. John F. Ward, Jr.,
Attorney at law
Baton, Rouge, La.

POLETTI FREIDIN PRASHKER & HARNETT
598 MADISON AVENUE
NEW YORK 22, N. Y.

CHARLES POLETTI
JESSE FREIDIN
EMANUEL L. GORDON
(1920-1960)
HERBERT PRASHKER
BERTRAM HARNETT
(On Leave)
MURRAY GARTNER

ARNOLD HOFFMAN
IRVING I. LESNICK
ERIC ROSENFELD
RICHARD H. BOROW
NOEL B. BERMAN
ABBEY L. BOKLAN
ROBERT B. SHAPIRO

TELEPHONE
MURRAY HILL 8-3200

CABLES-POLETFRE

RECEIVED
OCT 22 1963
VLADECK & ELIAS

October 21, 1963

Carl Rachlin, Esq.
280 Broadway
New York 7, New York

Re: CORE v. Clemmons,
No. 19703, 5th Cir.,
September 12, 1963

Dear Carl:

Thanks for sending along the opinion and petition for rehearing in the above. Below are some necessarily rough and few thoughts which might be worked into a brief or, better, a less formal document in opposition to the petition, if such a thing is permitted (5th Circuit's Rule 29 on Rehearing gives no clue) and would not now be too late. Let me say at the outset that I consider the petition has next to no chance of being granted (what granting of a petition for rehearing means I'm not too sure).

I. Appellees' point that the Court of Appeals "cannot" consider a question not raised, briefed or argued below is easily met. There is even Fifth Circuit authority, constituting exception to a general rule, that it can.

The leading case seems to be Hormel v. Helvering, 312 U.S. 552, 85 L.Ed. 1037 (1941):

> "There may always be exceptional cases or particular circumstances which will prompt a reviewing or appellate court where injustice might otherwise result, to consider questions of law which were neither pressed nor passed upon by the court or administrative agency below. See Blair v. Oesterheim Mach. Co., 275 U.S. 220, 225, 72 L.Ed. 249, 252, 48 S.Ct. 87.

> "Rules of practice and procedure are devised to promote the ends of justice, not to defeat them. A rigid and undeviating judicially declared practice under which courts of review would invariably and under all circumstances decline to consider all question which had not previously been specifically urged would be out of harmony with this policy. Orderly rules of procedure do not require sacrifice of the rules of fundamental justice." 312 U.S. at 557; 85 L.Ed. at 1041.

See, also, Leedom v. International Brotherhood of Elec. Wkrs., 278 F.2d 237, 244 (D.C. Cir. 1960); and DeFonce Construction Co. v. City of Miami, 256 F.2d 425, 428 (5th Cir. 1958)("This court can and will notice plain error either called to its attention by counsel or appearing to our own observation.")

II. Appellees' point that 42 USC 1985(3) does not require state action raises, of course, tricky and terribly important questions, especially for CORE, which would probably like to see that point established, in some other case, but I hardly think the 5th Circuit is about to change its mind on a petition for rehearing. In any event, the absence of state action was not the only ground upon which the court here decided the case. It also used the absence of a purpose on the part of CORE to deprive plaintiffs of 14th Amendment rights, and the absence of any 14th Amendment rights in plaintiffs to be deprived of in these premises. Each of these grounds is fatal to a case under 1985(3), and neither has anything to do with the state action question. The decision, therefore, can be sustained even if appellees are right on that question, which they correctly note the Supreme Court did not decide in Collins v. Hardyman.

Incidentally, for future reference you might note a Case Note in 70 Harvard L.Rev. 1299 (1957), on Brewer v. Hoxie School Dist., making a useful distinction between private action directed specifically at state officials and imminently endangering constitutional rights (which is within 1985(3)), and private action which interferes only with a state's performance of its general duty to insure 14th Amendment guarantees to its citizens (which is not). Though CORE need not admit it, the instant case, as pleaded in the complaint, arguably is of the latter type (it surely is not of the former type).

Well, as I reread this letter, I see there isn't much law in it. But here it is, anyway. I'm sending a copy to Nils Douglas, and returning to you your copy of the opinion and petition.

Sincerely,

Eric

Eric Rosenfeld

ER:srg
Enclosure

cc: Nils Douglas, Esq.

October 29, 1963

Eric Rosenfeld, Esq.
Poletti, Freidin, Prashker & Harnett, Esqs.
598 Madison Avenue
New York 22, N. Y.

Dear Eric:

RE: **CORE v. CLEMMONS**

You will be pleased to note that the Fifth Circuit denied motion for rehearing in the above.

Thanks mightily for your help. You will be hearing from me.

Regards,

CR/bs

CARL RACHLIN

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

RECEIVED
NOV 7 1963
VLADECK & ELIAS

November 4, 1963

Mr. R. Gordon Kean, Jr.
Parish Attorney
East Baton Rouge Parish
City of Baton Rouge
Baton Rouge, Louisiana

Re: No. 19703 - Congress of Racial Equality, Et Al
vs. Bryan Clemmons, Etc., Et Al

Dear Sir:

Pursuant to your application for stay of mandate in the referenced cause, the Court on October 31, 1963, entered an Order staying its mandate for a period of thirty (30) days from that date. Enclosed is a copy of the Order as entered.

Also enclosed is a certified record in this case for your use in the Supreme Court of the United States. Should any additional papers be needed they can be certified as a supplemental record. A copy of the Opinion, Judgment and Order denying rehearing, which should be printed as an appendix to your petition for writ of certiorari as provided by the rules of the Supreme Court, is enclosed.

A statement in the amount of $7.35 is enclosed to cover the cost of certifying the proceedings and the extra opinion, which I ask that you please remit.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Clara R. James
Chief Deputy Clerk

Encls.
cc: (Letter Only)
Mr. Robert F. Collins
Mr. Carl Rachlin

Supreme Court of the United States

OCTOBER TERM, 19 63

RECEIVED
DEC 3 [illegible]
VLADECK & ELIAS

BRYAN CLEMMONS, WINGATE WHITE, and
JOHN CHRISTIAN, etc., *Petitioner*,

vs.

CONGRESS OF RACIAL EQUALITY,
JOHN DOE and MARY DOE

No. 648

To Carl Rachlin and Stephen C. Vladeck, *Counsel for Respondent* :

You are hereby notified that the petition for writ of certiorari in the above-entitled and numbered case was filed in the Supreme Court of the United States on the 29th day of November, 1963.

The record filed pursuant to the requirement of Rule 21 (1) consists of:

one (1) certified copy.

(If the record was printed for the use of the court below, state here whether you have or have not filed nine copies as permitted by Rule 21 (4).)

No

John V. Parker

John V. Parker, *Counsel for Petitioner*.

Form 75 (8-61—10M)

Clemmons v CORE

EAST BATON ROUGE PARISH · CITY OF BATON ROUGE
BATON ROUGE, LOUISIANA

OFFICE
PARISH ATTORNEY

RECEIVED
DEC [illegible]
VLADECK & ELIAS

December 23, 1963

VIA AIR MAIL

The Honorable John F. Davis
Clerk, United States Supreme Court
Washington 25, D. C.

Re: No. 648
Bryan Clemmons, et al
versus
Congress of Racial Equality, et al

Dear Sir:

Mr. Carl Rachlin has informed us that he desires a delay of two weeks in filing a response to the Petition for Certiorari in the above numbered and entitled matter.

We herewith consent to the delay.

Very truly yours,

John V. Parker

John V. Parker
Assistant Parish Attorney

JVP:sgb

cc: Mr. Carl Rachlin
280 Broadway
New York 7, New York

International Business Machines Corporation

590 Madison Avenue, New York 22, N.Y.

Office of the Secretary

RECEIVED
VLADECK & ELIAS

January 7, 1964

Carl Rachlin, Esq.
280 Broadway
New York 7, New York

Re: CORE v. Clemmons

Dear Carl:

Attached is my typewritten copy of the Memorandum in Opposition to the Petition for Certiorari together with the petition and briefs you were good enough to send me. I apologize for the delay in getting to you what must seem like a very small effort. However, I assure you that a good deal of background work went into it.

If it should become necessary to file a more comprehensive brief, I will be happy to work on it using the material I have already gathered.

If you have any questions about the Memorandum, please do not hesitate to call me.

Sincerely,

Myra Schubin

MS:bt

Attachments

Milton J Schubin

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

POST OFFICE BOX 30120
NEW ORLEANS 30, LA.

January 27, 1964

JAN 31 ENT'D

Clerk
U. S. District Court
New Orleans, Louisiana

Re: No. 19703 - Congress of Racial Equality, Etc.
vs. Bryan Clemmons, Et Al
(Your No. 624 Misc. B. R. Division)

Dear Sir:

Having received from the Clerk of the Supreme Court of the United States a copy of the Order of that Court denying certiorari, I enclose a certified copy of the judgment of this Court in the above case, issued as and for the mandate, together with a copy of its opinion.

Incorporated on the judgment is a detailed statement of the costs in this Court, as follows:

Docketing cause, etc..........$25.00

recoverable by appellants from appellees upon a final settlement of all costs in your Court.

Enclosed herewith are the original exhibits (14) forwarded in connection with this case.

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By- Clara R. James
Chief Deputy Clerk

Encls.
cc: (Letter Only)
Mr. Robert F. Collins
Mr. Carl Rachlin
Messrs. R. Gordon Kean, Jr. and John V. Parker
Mr. John F. Ward, Jr.

CLASS OF SERVICE

This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

TELEGRAM

W. P. MARSHALL, PRESIDENT

DL = Day Letter

NL = Night Letter

LT = International Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

[illegible]06 BROADWAY
RECTOR 2-7835

GTA045 (16)RA136

WE106 WW NFA040 COLLECT NF WASHINGTON DC 20 1116A EST

CARL RACHLIN

280 BROADWAY NYK

PETITION FOR CERTIORARI CLEMMONS AGAINST CONGRESS RACIAL EQUALITY DENIED TODAY. ADVISE NEW YORK CITY ASSOCIATES

JOHN F DAVIS CLERK

(27).

W. H. H. SOUTHERN
IN MEMORIAM
MARTIN SOUTHERN
RES. 522-1397

ASSOCIATES
CHARLES W. SOUTHERN
DONALD B. SOUTHERN

SOUTHERN & SOUTHERN
ATTORNEYS AT LAW
ROOMS 201-8 REALTY BLDG.
TELEPHONE 522-4129
KNOXVILLE 2, TENNESSEE

February 12, 1964

FEB 17 REC'D

Mr. Carl Rachlin
Attorney at Law
165 West 46th Street
New York, New York 10036

Dear Mr. Rachlin:

Re: Young et al
vs- Stephens et al

Thank you for your letter of February 10. I enclose copy of a motion I am making in the Sixth Circuit.

Would you send one copy of brief in case of Clinton vs CORE to Honorable Carl W. Reuss, Clerk, United States Court Of Appeals For The Sixth Circuit, Cincinnati 2, Ohio, and advise that it is submitted subject to my application for the Court's leave to file? Also send me a copy to serve on Mr. Allen Elliott.

I would like nothing better than to associate with you in arguing this case in Cincinnati.

Cordially,

Martin Southern

Martin Southern

MS:ab
encl.

IN THE UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JOE E. YOUNG AND WILLIE H. MABREY

COMPLAINANTS-APPELLEES

VS

No. 15616

MRS. NELSON I. STEPHENS,

Individually and as Chairman of
Congress of Racial Equality

DEFENDANTS-APPELLANTS

MOTION FOR LEAVE TO FILE EXHIBIT AND FOR ORAL ARGUMENT ON MOTION FOR DISMISSAL OF APPEAL

Appellants would respectfully show to the Court that in their Brief On Motion For Dismissal of Appeal (page 4) they referred to case of Town of Clinton and Parish of East Feliciana v. Congress Of Racial Equality, et al, pending in the United States Court of Appeals for the Fifth Circuit; that said case involves an identical issue of this cause, the historical basis of the appealability of a remand to the state court of a case involving Civil Rights under the Constitution.

Appellants have procured two copies of very able and comprehensive brief on this issue of law, and respectfully move the Court for permission to file one copy as an exhibit to their brief in this case, and to furnish other copy to Mssrs. Elliott and Elliott adversary counsel in this case.

Appellants also move the Court to be allowed to argue the issues orally in their Motion For Dismissal of Appeal filed in this case.

This 12th day of February, 1964.

Solicitor for Appellants

I certify that I have personally deliveredcopy of foregoing Motion to Honorable Allen Elliott, Solicitor for Appellees in this case.

1

pl 5 – Injunction

+ R u ten
in statt
ct before

ordd and that perpetual
be further enjoined from prosecuting
such ~~cases~~ actions in the
19th Jud Dist Ct,

proceeding with,
taking any steps in furtherance
of or in any way prosecuting
such case or any one thereunder
for alleged violation of any tempo-
rary restraining order or otherwise;

¶ 20 - That defts allege and aver that pltf John Christian has filed a petition for ~~the~~ relief sought herein with the 19th Jud Dist Ct Parish of East Baton Rouge, State of Louisiana. ~~and that this proceeding on the pltf's application for a~~

21 That defendant herein is one of the defendants in said proceeding, and that the facts upon which relief ~~is~~ is sought ~~are substantive~~ therein are substantially the same as and encompassed within the meaning of the facts alleged herein.

22 That such petition in such other court as alleged above is repetitive, redundant, an unnecessary burden upon the courts and the defendants herein and the same therein and further, as alleged herein the relief sought by pltf ~~can~~ should be granted by this court, and that an action for such relief is improper in such other court.

Title 42

§1985 (3)

Collins v Hardyman - 71 S Ct. 937
341 US 651

§ Does not reach a conspiracy to deprive one of rights unless it is a deprivation of

(a) equality

(b) equal protection of the laws

etc

1985 (1) & (2) have no bearing at all

& (3) relates to deprivation of equal protection or equal privileges & immunities

(1) relates to public office

(2) relates to witnesses being intimidated

Title 28

§1343 relates to jur over

§1985 or depriving persons

Acts

Title II §1

Sherman Act.

(a) Petrs not damaged

(b) Ptnrs are engaged in an illegal conspiracy to deprive defts et al of their services

~~(c) no damages shown~~ [illegible]

(c) Pltfs have no interest in these — they cannot appear from X, Y.]

Counterclaim (A)

① Judgement granting injunction denied the counterclaim

② Facts in record warrant its being granted

③ defts are being harassed by pltf ~~ten~~ agents record amply shows because they advocate racial equality

(a) the letter to the stores

(b) the leaflets

(c) the picketing

(d) the demonstration re [illegible] [illegible] reference to lunch counters

~~at below at~~

④ these are federally protected rights, the Court should have upheld them

⑤ [illegible]

Counterclaim (B)

mind

(a) all evidence points to it
the letter, the leaflets
the picketing

(b) all referred to by
pltfs voluntarily

(c) This is the point that
they broke up this demonstration.

(6) In other words pltfs are
really ~~ac~~ a front for
the ~~co~~ Forces of Baton Rouge
and are not acting for reasons
they give

Counterclaim should have
been granted since pltfs have
acted to deprive, under the
color of state law, equal
protection to defts.

①

BATON ROUGE

1— MAY IT PLEASE THE COURT

2 —(a) Appeal from Jment granting injunction of Judge West of 2/2/62 p 365-6 of Record

and

(b) denial of injunctive relief sought by defts - appellants

③ Complaint sought an injunction asserting the jur of this Ct under

(a) Title 28 a 1332 diversity ~~clause~~ section

(b) §1343 - Civil Rts section "to redress the deprivation under color of state law of any right secured by the U S Const providing for equal rights

(2) B. R.

(4) Complaint alleges p1-9 of TR

(a) that CORE came into B. R. to ferment (sic) violence & finance & sponsor it

(b) and to provoke breaches of peace in and around B. R.

(c) That this has caused people to congregate & to provoke violence & breaches of peace

defts have conspired also with people ~~have conspired~~ to violate various La laws

re (i) sit ins & trespass

(ii) disturbing peace

(iii) ~~preventing bus~~ interfering with conduct of business

and §1985 of Title 42 - the civil rights law:

~~conspiracy~~ conspiring to deny people equal protection of the laws by hindering the state authorities

③

(d) Complaint also alleges at great length that defts app have restrained trade of firms in town ~~by~~ under Title XV §1

(i) leaflets

(ii) picketing urging negroes not to buy

(iii) this done in such a manner so as to intimidate

(iv) Exhs A, B to complaint ~~allege~~ in support of this part of complaint

A - letter asking negotiations re Negroes

B - leaflet asking persons not to purchase

(v) Complaint alleges that pickets arrested on Dec 14, 1961 - no allegation of their picketing was wrongful

(vi) That on Dec 11 - in protest of the arrests began the ~~[illegible]~~ demonstrations 150 persons (or more) referred to at length in th

(vii) for all this the injunction is sought

TRO

(viii) ANSWER & COUNTER CLAIM

(a) Deny all material allegations — ~~do~~ elected not to deny the jur of the Ct

(b) Counterclaimed that the acts of pltfs were designed to deny

I ~~II~~ freedom of speech, assembly

II privileges & immunities of citizens

~~III~~

III seek injunctive relief to protecting deft from arrest incarceration etc. under the guise of the State criminal laws

⑤

FACTS

1 — Exh - A to complaint letter to Store to negotiate p 10-11 TR

2 - Exh - B - 2 leaflets re Selective Buying TR - 12-14

3 - non-violent Action clinic TR - 15 - 16

4 - Sit-ins at Kress McCrory p. 118 (White)

5 - picketing 12th + 13th

p. 136 "and then when they resumed ~~they~~ picketing the second time, we arrested them for violating the law"

arrested in front of stores

(6)

FACTS

6 – then demonstration next morning
9:30 AM assembly at Southern Univ.
Ronnie Moore arrest
60 days

7. – partially blocked traffic on way [illegible]

No Violence (A)
by demonstrators

TR 48 - Targus saw no violence
before Tear Gas

Cap Henderson 62 - As they approached BR -
Cox asked Henderson how to
proceed. H told him to stay
// road
No trouble at all after
that. - tho same slow moving

Mayor Christian 101 - No unlawful intent
when just saw them -
1200-1500 people

102 - no violence, under
control

105 - no riot at time of
tear gas

108 - people orderly when seen
by Mayor

White 150 - Cox said prayers etc
oath of allegiance (7 mins)

no violence (B)
by demonstrators

White 152 White said OK to Cox

" 156 people very quiet

" 161 Everything all right
then Cox referred to lunch
counters
cheers clapping
emotional
places named

163 - at this point ~~police~~ sheriff
stepped in & ordered them
to disperse

Mayor - 180 - no police act until
Cox said "lunch counters"

178 - people had been orderly

Trigg 240 except for abuse of the sidewalk
no violence by demonstrators

No Violence (C)
by demonstrators

Ervin 260 - "We are a non-violent group, and we think well of all people. If they spit upon us, we will not spit back"

Ervin at call for sit-in
pr62 there were
"cheers"
"laughter"
"applause"
"clapping"

263 "Jumping and shouting as young people would do in the circumstances"

Ervin 271 - violence was occurring by the police

282 - tear gas, dogs

280 - no violence on picket line or sit-ins

282 - did not see any violence but a parade of whites

No violence ~~3~~(1) 1

Erwin 286 - No reason to believe this group was seeking to perpetrate violence
or attempting to overrun the jail

Erwin 292 — Cox never called for violence

292 the reaction of the ~~crowd~~ demonstrators was "exuberant" not "violent"

Erwin 291 - there was nothing in Cox' speech that would incite violence

Clemmons 312 - no violence by demonstrators - but he was afraid

~~Analysis of Judge Opinion~~ (D)

Injunction (A)

p36(Can't – finance, sponsor, or encourage, or engage in meetings or other activities wherein violations of federal or state laws are suggested advocated or encouraged

1 ~~a~~ what does this have to do with this case?

~~2~~ (a) ~~all~~ testimony related to by demonstration

~~3~~ (b) stops them from attending at meetings where there is a discussion of the ~~court~~ unconstitutionality of a state law on segregation for example

2 (a) Can't engage in meetings wherein disobedience to orders of police ~~it is the duty of the citizen to~~ is advocated

disobey next

Injunction (B)

5-(b). The citizen has a right to refuse an improper order of the police

Garner v Taylor cases
both Louisiana cases

(3) The rest concerns traffic problems

Injunction is offensive to
speech
free ass'n

It turns a traffic problem into a federal case

Traffic jamming (A)

Cap Henderson

Tr-60 traffic snarled while people walking on public highway prior to reaching City of B.R.

63 - People moved over to shoulder of rd after Cox spoke to him

65-66 after they came to BR - walked on sidewalk - followed lights

68 - arrests made of people who got off sidewalk

70-1 after dispersal - no particular problem re traffic

Traffic Jamming (B)

Ervin – 25¢ hard to walk

Police + nos of people

Christian p 92 - used all police available

Deagan 95 - 1200 - 1500 people

White 145 - 2000 people

146 - hundred officers

165 - 200 whites

173 - used "dogs"

White 244-5 only then demonstration overtaxed the police

Trigg - 229 - picketing did not tax police

231 - nor for ~~pi~~ sit ins

Ervin - 268 all reporters agreed there were about 1500 people

Clemmons 307 1500

Violations of State Laws

Henderson - 87 - no permit needed

62 - Cox asked Henderson how to obey law

White 140 - never got permit for parade

" 165 - possibility of overrunning jail
not a fact to back this up

166 - no communication with people in jail

Erwin 286 - no reason to believe group would overrun the jail

---

Kraeger - 178 - some blocking of sidewalks, but people orderly until near the end of Cox' speech
then noise

Erwin-266 Cox did not tell ~~the~~ to move when Sheriff spoke

Simmons

323 – he knew of no violations of law other than the problem created by the demonstration

Police interfered (A)

Mayor 103 people started to clap & shout at Cox' speech

105 - no riot at time of tear gas

113 2-3 or whites watching -
108 - ~~not to~~ would not say - hostile

Mayor 180 - people worked up at Cox's speech

Mayor - 178 people orderly up to time happened of Cox' speech

White 202 - arrest 1 picketer after talk with Pitcher

Erwin 262 - at call for sit in shouting, cheering, clapping

Police Interfered (B

Erwin 263

"Jumping and shouting as young people would do in the circum-stances."

Clemmons – 310 when Cox started Talking ~~came~~ lunch counters "it became intolerable"

312 – Sheriff said break it up

315 – Ronnie Moore remark in jail about bloodshed

Whites ~~Appo~~ actions

Henderson drunks from the Comb, Miss
p67

113 Mayor would not say they were hostile

White - 100 whites

Trigg 228 - ~~that~~ white people were agitating - angry

Erwin 291 - when Cox referred to sit-ins whites in area got restive

Erwin 297 - whites menacing if they were asked to move would have lessened the chance for violence

~~Real party~~

Real Reasons (A)

perhaps real party in interest

Ex h A, B

White - 124 refers to school for non-violent action

" 128 - Sit ins at Kress, McCrory

" 135-6 picketing on 12th & 13th

pickets told they were violating law, & they must desist

twenty-three arrested never tried

" 137 picketing in front of stores - immediately arrested
pickets never tried to this day

163 no interference ~~until~~ a problem could

Real Reasons (B)
Cox referred to lunch counters

Mayor - 150 - lunch counters

178 - No mere blocking of street
etc but people orderly until
near the end of Cox' speech

White - ~~Pitcher~~ ~~Co~~ Police called
202 Pitcher who told them it
was a violation of law to
picket.
pickets arrested - no
assertion they were violent etc.

Trigg - 229 - "we arrested all of the
picketers"

245 - "I sent several of my
officers to check the situation and
to make arrests if there were
pickets"

Arrests

Henderson 68 — traffic

78 — Ronnie Moore on loud speaker

(by the way given 60 days & monetary fine)

Mayor 113 — Cox, who led demonstration arrested

White 137 pickets arrested in front of store — never tried points

Real party in interest

Police only ones who committed violence

Police by irresponsible acts made pickets frustrated ~~thus~~

peaceful picketing 280

pickets never fired – that is what DA thinks of his case

Ct. [illegible] fellow have turned a traffic problem into a federal case

No evidence of a conspiracy to destroy govt. On the contrary all efforts were made to give meaning to govt & constitution

Issuance of injunc is not the same as arrests we have never urged ~~said~~ can't arrest if a violation of law committed

Analysis of Judge's (A) Opinion

1 — Ct found the Jx of the ct

Title 28 1331 — case arises under laws of US

1332 — diversity

Title 42 — 1985 — conspiracy to interfere with civil rts

② Ct below relied on Brewer

Hoxie

p. 355

③ The thinking of the Ct below is illustrated by this view

"thus when there develops a dispute or controversy between conflicting claims to certain rights and freedoms, it is the function of the Court to attempt to so balance and distribute these rights as between the contending parties as to do the greatest good for the greatest number of people

Great restatement of const'l law

minority often needs protection

Analyses of Judges (B)
opinion

4 - Judges social views
on people who refuse to leave
when asked by owner

5 - Hoxie 359-62 Jr under Brewer

8 -

6 (a) On facts it is interesting
p333 the first finding of fact
relates to the letter to
negotiate

334 7 (b) the second relates to the
leaflets

8 (c) the third is non-violent
[illegible]

335 (d) picketing

Analysis of Judges (C1
Opinion

(e) the arrest of the pickets brought on the demonstration

(d) reference to ~~sit in~~ lunch caused police riot

7 — Interesting to note how the estimates of the people in his decision become a solid 5000 in light of the testimony by Mayor & Erwin

8 — Admits the nonviolence of the demonstrators by all witnesses p 345

then forgets it & refers to a few vague - heard in the crowd

~~9 refers to testimo~~ testimony p 344 as showing there was a danger of violence from demonstrators

9 — refers to testimony of Erwin and then ignores "exuberant" "not violent" — danger from whites —

Judge Tuttle wants a short typewritten memo from us on the fact that there are only John Does in our case and yet the injunction affects them

a failure? indispensable parties

Collins v Hardaman
Calif Case

MSS SEDFRE
546

C.O.R.E. us Town of Clinton & Parish of East Feliciana, Louisiana
(Voting Irregularities)
Dec, 1963 - March, 1965

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IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20960

CONGRESS OF RACIAL EQUALITY, ET AL.,
Appellants,
versus

TOWN OF CLINTON and PARISH OF EAST FELICIANA,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 12, 1965.)

Before JONES and BROWN, Circuit Judges, and SHEEHY, District Judge.

PER CURIAM: It appearing that this cause is moot, the appeal is

DISMISSED.

Adm. Office, U. S. Courts--E. S. Upton Printing Co., N. O., La

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 20,960

CONGRESS OF RACIAL EQUALITY, et al.,

Appellants,

-against-

TOWN OF CLINTON and PARISH OF EAST
FELICIANA,

Appellees.

MEMORANDUM OF FACT

Because of the lapse of time since the institution of the proceedings below, appellants deem it necessary to submit this memorandum summarizing the factual situation.

The Town of Clinton is in East Feliciana Parish, Louisiana. This parish, according to the United States Report on the Census for 1960, Final Report (PC(1)-20B, has a total population of 20,198, of which 54% or 10,906 are Negro. According to the Report of the United States Commission on Civil Rights for 1963, the total number of white persons registered to vote in 1956 was 2,817 as compared to 1,319 Negroes. In 1959, as a result of a voter purge sponsored by the White Citizens Council, 1,234 Negroes were removed from the registration lists. As of August of 1963, when theproceeding below was instituted, only 120 Negroes were registered to vote in the parish, as compared to 2,515 whites.

On July 24, 1963, appellant issued a press statement in which it said that it was launching a voter registration drive in the Sixth Congressional District of which East Feliciana is a part. At the beginning of August, civil rights workers assigned by appellant began to escort Negroes to the second floor of the Kline Building in Clinton where Henry Earl Palmer, the Registrar of Voters, has his office. On August 20, 1963, although there had been no picketing, rallies or demonstrations in Clinton, Judge John R. Rarick of the 20th Judicial District Court for the Parish of East Feliciana, who maintains a racially segregated courtroom, issued an ex parte temporary restraining order without notice or hearing.

This temporary restraining order enjoined and prohibited appellant and all others acting in concert with it from violating certain Louisiana criminal statutes "by meeting and conspiring to violate the criminal statutes of this state... by unlawfully picketing and unlawfully taking possession of private places of business, when having been requested to leave and failing to do so, and, by congregating with others on public streets and highways and upon public sidewalks and in an around any free entrance to any place of business or public buildings and in failing to move and disperse and move on when ordered to do so by any law enforcement officer."

Following the issuance of this order, the following legal moves by the respective sides took place on the dates indicated:

August 20, 1963: Appellees secured an ex parte Temporary Restraining Order.

August 28, 1963: Hearing on the preliminary injunction set and appellants removed the case to federal court.

September 6, 1963: Hearing before U.S. District Judge E. Gordon West, on the motion to remand.

September 13,1963: Action was remanded to the State Court, Judge John R. Rarick issued a new temporary restraining order embodying the terms of that of August 20, 1963. Hearing on the Preliminary Injunction set for September 23, 1963.

September 23,1963: Hearing on Preliminary Injunction continued by consent of the parties to September 30th.

September 24, 1963:	Appellees filed Supplemental and Amended Petition adding new parties defendants and new allegations.
September 27, 1963:	Hearing on the Rule to Show Cause why additional parties should not be made defendants and petition amended. The rule was made absolute.
September 27, 1963:	Motion to Dissolve filed by appellants.
September 30, 1963:	A hearing was started on the Motion to Dissolve, which was taken under advisement. Bench warrants were issued for James Farmer, National Director of CORE on the theory that since he had been subpoened to appear on August 28, 1963, the day the matter was removed to federal court, he was still under the processes of the Twentieth Judicial District Court and, notwithstanding the fact that James Farmer had not been served, and had never been in Clinton, a bench warrant was issued.
September 30, 1963:	Over the objection of counsel, appellees were permitted to amend their petition orally by way of an opening statement to the effect that CORE was an arm of the Communist conspiracy and that its goal was not voter registration but to subvert local government. By agreement of counsel, the hearing was continued until October 14, 1963.
October 11, 1963:	Appellant filed a notice of appeal from the order of remand of the court below.
October 12, 1963:	Judge John R. Rarick issued a rule nisi to 26 persons ordering them to show cause on October 14, 1963 why they should not be held in contempt for disobeying the Temporary Restraining Order issued on September 13, 1963.
October 14, 1963:	Appellant filed a Motion for Stay Pending Appeal and Alternatively for a Writ of Mandamus in this Court which granted a ten day stay of the state's injunctive order.
October 15, 1963:	Appellees filed a Motion to Dissolve this Court's stay.

October 18, 1963:	This Court held a hearing on the Motion to Dissolve.
October 22, 1963:	This Court continued its stay of October 14, 1963 until further orders.
October 24, 1963:	The day the ten-day stay granted by this Court would have expired had it not been continued until further orders, counsel appeared in Clinton Courthouse. There were about 100 Negro spectators sitting in the court but only two whites who were sitting inside the rail. Because of this segregation, counsel for appellants objected to any proceedings being held at all and were overruled, reserving a bill of exceptions. Counsel also objected to a roll call of persons who were allegedly under subpoena to appear on August 28, 1963 and allegedly were still under process of this court. Bench warrants were issued for those who did not answer roll call, but the warrants were stayed until the matter was reassigned. Appellees moved that the temporary restraining order be extended for ten days and over objection of counsel and exception, the temporary restraining order was continued until November 3, 1963 at 11:45 a.m. The court recited from the bench that all persons under subpoena would be required to return on November 4, 1963 since November 3, 1963, the day on which the temporary restraining order expired, was a Sunday. Judge John R. Rarick read from the bench his order continuing the Temporary Restraining Order.

April 4, 1964:	Despite this Court's stay, appellees obtained an order from Judge Rarick dismissing the injunction action.
May 6, 1964:	Hearing before this Court on appealability of orders of remand. No appearance by counsel for appellees.
September 22, 1964:	Determination by this Court that orders of remand were appealable whether appeals therefrom were filed before or after passage of Title IX of the Civil Rights Act of 1964.
February 3, 1965:	Argument before this Court on the merits of removability.

It is obvious, from the refusal of the state court to desegrate his courtroom (see affidavits of Beverly Axelrod and Gordon Carey attached to petition for removal), the nature and tenor of that court's temporary restraining order, and the way in which the various hearings were conducted that it is absolutely impossible for appellant or any Negro or white citizen concerned with enforcing the provisions of the Thirteenth, Fourteenth and Fifteenth Amendments to the federal Constitution there to obtain a fair trial.

Furthermore, the injunction attempts to punish persons who are doing acts under color of federal law providing for the equal civil rights of citizens of the United States. Nothing would be more apparent than that appellant and those acting in concert with it were engaged in seeking to register Negroes to vote, all in furtherance of the Constitution of the United States and such statutes as 42 U.S.C.1971 et seq.

Accordingly, it is appellant's posture that, both under subdivisions (1) and (2) of 28 U.S.C. 1443, it is entitled to remove this civil action to the United States District Court for the Eastern District of Louisiana for trial.

Wherefore, appellant respectfully requests that the order of the court below be reversed and that this cause be remanded thereto for further proceedings.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 20960

TOWN OF CLINTON AND PARISH OF EAST FELICIANA,

Respondents,

v.

CONGRESS OF RACIAL EQUALITY, ET ALS,

Appellants.

On Appeal from the United States District Court
for the Eastern District of Louisiana

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INDEX

Page

Statement of the Case 1

Questions Presented 3

Argument

POINT I
THIS COURT HAS JURISDICTION TO HEAR AND DETERMINE THE APPEALS OR TO ENTERTAIN THE PETITION FOR A WRIT OF MANDAMUS 3

A. This Court has the Power to Review Orders Remanding the Proceedings Under the Relevant and Controlling Statutes. 4

B. A Construction of 28 U.S.C. 1447 (d) Which Would Foreclose Any Appeal Review of an Order Granting a Remand of Proceedings Removed Under 28 U.S.C. 1443 Would Render that Statute Unconstitutional . . 16

Conclusion 25

Certificate . . . .

Appendix . . . . i - iv

TABLE OF AUTHORITIES RELIED ON

Page

Bolling v. Sharpe, 347 U.S. 497 . . . . 16, 21

Brown v. Board of Education, 347 U.S. 483 . . . . . . 21, 24

Burns v. Ohio, 360 U.S. 252 22

Chicago and Alton R.R. Co. v. Wiswall, 23 Wall. 507, 23 L.Ed. 103 . . . . 5, 9, 12, 20

Cole v. Garland, 107 Fed. 759 (CA 7, 1901) 7, 8, 14, 15, 21, 24

Coppage v. U.S., 369 U.S. 438 22

Douglas v. Greene, 363 U.S. 192 21

Draper v. Washington, 83 S.Ct. 774 . . . . 21, 22

Edrington v. Jefferson, 111 U.S. 770 17

Employers Reinsurance Corp. v. Bryant, 299 U.S. 374 . 10

Eskridge v. Wash. State Bd., 357 U.S. 214 . . . . . . 21, 22

Ex parte Pennsylvania Co., 137 U.S. 451 . . . . 7, 9, 10

Ex parte Roe, 234 U.S. 70 . . . . 19, 20

Ex parte Virginia, 100 U.S. 341 19

Gay v. Ruff, 292 U.S. 25, 29 . . . . 6, 9, 14, 15

German National Bank v. Speckert, 181 U.S. 405 (1901) 15

Griffin v. Illinois, 351 U.S. 12 22

Insurance Co. v. Comstock, 16 Wall. 270, 21 L.Ed.498 5

Johnson v. Butler Bros., 162 F.2d 87 17

Korematsu v. United States, 323 U.S. 214 16

McCrary v. Indiana, 364 U.S. 277 21

TABLE OF AUTHORITIES RELIED ON
(Cont'd.)

Page

Monroe v. Pape, 365 U.S. 175 (1961) 18, 21, 24

Morgan v. Kroger Grocery and Baking Co., 96 F.2d 470 17

Plessy v. Ferguson, 163 U.S. 537. 21

The Slaughterhouse Cases, 16 Wall. 36, 31 L.Ed. 394 . 18

Snypp v. Ohio, 70 F.2d 535 (CA 6, 1934) 7

Strauder v. W. Virginia, 100 U.S. 303 (1879) 5, 12, 17, 18, 19, 23

Tennessee v. Davis, 100 U.S. 257, 25 L.Ed. 648 . . . 12

STATUTES

28 U.S.C. 1443 . . . . 3, 16

28 U.S.C. 1447 . . . . 4, 6, 9, 13, 16, 20, 25

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

- X

TOWN OF CLINTON AND PARISH OF EAST FELICIANA, :

Respondents, :

-against- : No. 20960

CONGRESS OF RACIAL EQUALITY, ET ALS, :

Appellants. :

- X

BRIEF FOR APPELLANTS

Statement of the Case

On August 20th, 1963 an action for injunctive relief and a temporary restraining order was commenced by the Town of Clinton and Parish of East Feliciana as plaintiffs against the Appellants in the Twentieth Judicial District Court in and for the Parish of East Feliciana, State of Louisiana. On that same day an *ex parte* temporary restraining order was issued. Appellants were ordered to show cause at 9 A.M. on October 28, 1963, why a writ of preliminary injunction in the form and substance of the temporary restraining order should not issue. However, immediately prior to the return date of said hearing the action was removed, pursuant to 28 U.S.C. 1443, to the United States District Court for the Eastern District of Louisiana. On September 6th, 1963, a hearing on respondents' motion to remand was held in the Court below and on September 13th, 1963, said motion was granted. Immediately subsequent to the granting of respondents' motion to remand, they procured a new temporary restraining order, in manner and form a duplicate of the earlier one and a hearing on a preliminary writ of injunction was set for September 23rd, 1963 by the State Court. This hearing was continued on consent until September 30th, 1963. On September 24th, 1963, respondents filed a supplemental and amended petition adding new defendants to the State Court proceeding. On September 27th, 1963 appellants moved to dissolve the temporary restraining order.

On October 11, 1963, Notice of Appeal from the remand order of the Court below was duly filed and on October 14, an alternative petition for a writ of mandamus, together with a motion for a stay pending appeal, was filed with this Court. On that same day, the requested stay was granted for a period of ten days. On October 15, a motion by respondents to dissolve the aforesaid stay was filed with this Court and a hearing held thereon on October 18, 1963. On October 22, 1963, by order of this Court, the aforesaid stay was continued in effect pending a determination by this Court on the merits of the contentions of appellants as to the reviewability of the order of remand by the Court below.

This brief is filed pursuant to a direction of this Court dated November 21, 1963.

Questions Presented

1. Whether an order remanding a case removed to a United States District Court pursuant to 28 U.S.C. 1443 is reviewable.

Argument

POINT I

THIS COURT HAS JURISDICTION TO HEAR AND DETERMINE THE APPEALS OR TO ENTERTAIN THE PETITION FOR A WRIT OF MANDAMUS.

Summary of Argument

The state court proceedings were removed to the District Court pursuant to the authority of Title 28 U.S.C. 1443, subsections (1) and (2), the Civil Rights Removal Statute. This statute reads as follows:

> "... 1443. Civil rights cases.
> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;
> (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

The orders remanding the cases to the state court would be ordinarily reviewable in the Court of Appeals unless appellate review is totally foreclosed by the operation of Title 28 U.S.C. 1447 (d). This provision states:

> "An order remanding a case to the State Court from which it was removed is not reviewable on appeal or otherwise."

However, an examination of the statutory history of both 1443 and 1447 (d), the relevant case law, and the intention of the enacting Congresses indicates that appellate review of an order remanding civil rights cases removed to the federal courts pursuant to 1443 is not foreclosed by 1447 (d). The Civil Rights Removal Statute was specifically exempted by statute from the operation of 1447 (d) and its predecessors. Moreover, any interpretation of 1447 (d) which would frustrate an appeal by Negro defendants seeking review of an order closing their access to the federal courts as provided for in 1443 would not only fly in the face of specific Congressional intention that the Civil Rights Removal Statute was to be exempted from the operation of 1447 (d), but would raise serious constitutional questions as to the validity of 1447 (d) under the equal protection guarantees of the Federal Constitution.

A. This Court Has the Power to Review the Orders Remanding the Proceedings Under the Relevant and Controlling Statutes.

1. The statutory history of 1443 and 1447 (d)

a) Section 1443 is based upon Title 28 U.S.C., 1940 ed. Section 74, 36 Stat. 1096. This section is in turn derived from Revised Statute 641. Revised Statute 641 was first enacted as one of the provisions of the Civil Rights Bill of 1866, 14 Stat. at L. 27, chap. 31, Sect. 1. This Bill, first passed prior to the adoption of the Fourteenth Amendment and later reenacted under the authority of that Amendment, was the heart of the overall Congressional "design to protect an emancipated race, and to strike down all possible legal discriminations against those who belong to it." Strauder v. West Virginia, 100 U.S. 303.

At the time of the enactment of the original predecessor of 1443, appellate review of any order of the Circuit Court, the then original federal court, lay directly to the Supreme Court. However, the general appellate jurisdiction of the Supreme Court by way of appeal or writ of error was then limited to review of final judgments. Insurance Co. v. Comstock, 16 Wall. 270, 21 L. Ed. 498. Review of an order remanding a case removed to the federal courts pursuant to the Civil Rights Bill of 1866 was therefore available only by way of a petition for mandamus. Chicago and Alton R.R. Co. v. Wiswall, 23 Wall. 507, 23 L. Ed. 103.

b) The Act of March 3, 1875, chap. 137, sect. 5, 18 Stat. 470, 472, provided for the review of an order remanding to state courts by way of appeal or writ of error. This statute applied to all removal statutes, including Rev. Stat. 641, the Civil Rights removal provisions.

c) The Act of March 3, 1887, 24 Stat. 552, 553 (corrected by Act of August 13, 1888, 25 Stat. 433, 434) repealed the provisions of the 1875 statute and generally stated in respect to the removal statutes,

> "no appeal or writ of error from the decision of the circuit court so remanding such cause shall be allowed."

This provision was later reenacted in Title 28 U.S.C. 71, 1940 ed., and later substantially embodied in present 28 U.S.C. 1447 (d).

d) However, the Civil Rights Removal Statute, as differentiated from the general removal statutes, was specifically excluded from the limiting effect of the 1887-88 Acts. Section 5 of the 1887-88 Acts enacted a savings clause in respect to Rev. Stat. 641, the Civil Rights removal provisions. Together with other Civil Rights provisions, the savings clause provided that,

> "Nothing in this section [the general repeal of the 1875 Act], shall be held, deemed or construed to repeal or affect any jurisdiction or right mentioned in Section 641."

This savings clause contained in Section 5 was not repealed by the enactment of the Judicial Code even though not specifically repeated in the codification. Gay v. Ruff, 292 U.S. 25, 29.

2. The case law interpreting the impact of the savings clause upon the right to review an order of remand in a civil rights removal case under 1443 and its predecessors.

It is clear that absent considerations of the impact of the savings clause upon civil rights removal cases, the purpose of Congress in the 1887 Act was to contract the jurisdiction of the federal courts in non-civil rights removal cases by eliminating appellate review. Ex parte Pennsylvania Co., 137 U.S. 451. The savings clause, however, made it amply clear that Congress had no such intentions in respect to the Civil Rights Removal Statute.

The meaning of the savings clause in respect to the availability of appellate review in civil rights removal cases appears to have been discussed in only two opinions, each one a decision by a Court of Appeals, Cole v. Garland, 107 Fed. 759 (CA 7, 1901) and Snypp v. Ohio, 70 F.2d 535 (CA 6, 1934). The 1934 Sixth Circuit opinion rests solely upon the rationale contained in the 1901 opinion of the Seventh Circuit. Cole v. Garland thus appears to be the only analysis of the impact of the savings clause.

(a) The holding and rationale of Cole v. Garland.

Cole v. Garland involved an attempt by a defendant to remove a state court criminal proceeding to the federal courts pursuant to Section 641. The lower court remanded the proceeding to the state court and the defendant attempted to appeal to the Court of Appeals. In response to the assertion that the Act of 1887 foreclosed his right to review the defendant argued that the savings clause in that Act safeguarded the right to review in civil rights removal cases.

The Court of Appeals responded by pointing out that prior to the Act of 1875 an order remanding a cause was not reviewable by appeal or writ of error because it was not a final order within the meaning of the then existing scope of the appellate jurisdiction of the Supreme Court. Accordingly the Court of Appeals held that since there appeared to be no review available for a remand order under the original civil rights removal statute, prior to 1875, the Act of 1887 did not take anything away from the scope and impact of the Civil Rights Removal Statute by limiting all review. Under this analysis, the Court argued, the denial of a review to a remand order in a civil rights removal case would not violate the specific terms of the savings clause, since the denial of review would not "affect or limit" a prior existing right of review.

Although the rationale of the 1901 opinion in Cole v. Garland is logical in its structure it rests upon a simple misconception of the actual situation in respect to the availability of review under the original Civil Rights Bill of 1866. The fact of the matter was, as we have pointed out above, that review of orders remanding cases removed pursuant to the Civil Rights Removal Statute was clearly available. The only question was a technical one of form. Since the order remanding such cases was not a "final order" review was not available by way of appeal or writ of error. Review was, however, clearly available by way of a Writ of Mandamus. This was sharply enunciated by the Supreme Court in Chicago and Alton R.R. Co. v. Wiswall, 23 Wall. 507, 23 L. Ed. 103 (1875). In this case Chief Justice Waite held as follows:

> "The order of the circuit court remanding the cause to the state court is not a 'final judgment' in the action, but a refusal to hear and decide. The remedy in such a case is by mandamus to compel action and not by writ of error to review what has been done."

Thus review of an order remanding to a state court was available by way of mandamus to compel the circuit court to "hear and decide" the removed cases at the time of the enactment of the first Civil Rights Removal Statute in 1866. See also: Ex parte Pennsylvania Co., supra, and Gay v. Ruff, supra.

It is clear therefore that the opinion of the court in Cole v. Garland rests upon a misconception of the actual facts. The application of its own rationale would thus require a totally different conclusion. The Garland court concedes that the impact of the savings clause in the 1887 Act is to preserve any existing right of review in respect to the Civil Rights Removal Statute. Since review was in fact available by way of mandamus any interpretation of the 1887 Act, now embodied in 1447 (d), which would totally shut off any appellate consideration would violate the plain words of the savings clause in Section 5 of the 1887 Act.

(b) Ex Parte Pennsylvania Co.

The serious question of the effect of the savings clause of the 1887 Act upon the availability of any form of appellate review of an order of remand in a civil rights removal case thus comes to this Court unhindered by any controlling case law gloss. Those cases such as Ex parte Pennsylvania Co., supra, which hold that the Congressional intent in the 1887 Act was to abolish even the writ of mandamus as an avenue of appellate review deal only with those removal statutes which are not within the four corners of the Section 5 savings clause. Cf. Employers Reinsurance Corp. v. Bryant, 299 U.S. 374. This is apparent not only from the plain words of the savings clause but from the interpretation of the 1887 Act in Ex parte Pennsylvania.

In this decision, only three years after the passage of the 1887 Act, the Court pointed out that the general Congressional intent was to limit and restrict the exercise of federal jurisdiction. This then explains the purpose of the savings clause. If the general intention of the statute was to limit federal jurisdiction, Congress was extremely anxious to make it clear that the exercise of federal jurisdiction in one area, namely the enforcement of the Fourteenth Amendment, would not be affected by the general limiting scope of the statute. This is the explanation for the statutory direction that nothing contained in the 1887 Act was to be interpreted as repealing or affecting any right pertaining to the Civil Rights Removal Statute.

3. The Congressional Intention and Public Policy Considerations Underlying the Operation of the Savings Clause.

The Congressional concern for the Civil Rights Removal Statute is perfectly understandable. While the general removal statutes dealt solely with questions of a convenient forum for the litigation of essentially private rights, the Civil Rights Removal Statutes were originally enacted to vindicate broad public rights of a pressing national importance. Since the purpose of the 1887 Act was generally to restrict the utilization of the federal courts for removal proceedings of a primarily private nature it became important for Congress to make it quite clear that this restriction did not apply where removal touched problems of a fundamentally different nature, the vindication of the fundamental rights of freedom and equality guaranteed to the Negro by the Fourteenth Amendment. This purpose Congress accomplished through the savings clause in Section 5 of the 1887 Act.

Section 5 therefore exempted from the generally restrictive impact of the legislation the jurisdiction vested in the federal courts by the Civil Rights Removal Statutes. The plain words of the savings clause require a construction of the 1887 Act in such a manner as to refrain from affecting or limiting any of the rights involved in the invocation of federal jurisdiction provided for in the original provisions of the Civil Rights Bill of 1866 and subsequently incorporated in 641 of the Revised Statutes.

It is highly significant in this respect that whatever original restrictions existed upon the right to appeal an order of remand were purely of a procedural nature. There were no policy considerations militating against a right to appellate review of such orders. The only considerations were technical in nature and went to the form of the review, rather than to the substance of the review. Chicago and Alton R.R. Co. v. Wiswall, supra. This is understandable. A Congress which viewed the Civil Rights Bill of 1866 as a great charter of liberty designed to protect the newly emancipated race, The Civil Rights Cases, supra, would hardly have tolerated a situation in which the important right to turn to the federal courts for protection could be virtually nullified by a denial of any right to review an order remanding proceedings to the state courts.

In 1866 the Congress viewed the Civil Rights Removal Statute as an essential ingredient in a program of full enforcement of the sweeping guarantees of liberty and equality enunciated in the Fourteenth Amendment. Tennessee v. Davis, 100 U.S. 257, 25 L. Ed. 648; Strauder v. West Virginia, supra. It is axiomatic that any fundamental right essential to the protection of such basic Constitutional aims as equality and freedom would hardly be left to the sole unreviewable authority of a single federal judge, himself more than possibly influenced by the very passions and prejudices which required resort to the right to removal in the first instance.

From the first years of its enactment this legislation, destined to play an essential role in the overall scheme of Congressional enforcement of the Fourteenth Amendment, was protected by the availability of appellate supervision through the high prerogative Writ of Mandamus. From 1875 until 1887 this original form of appellate review was supplemented by statutory appeal and writs of error. When the Congress in 1887 came to the conclusion that in the many instances of non-civil rights removals based upon diversity of citizenship or the presence of a federal question, federal jurisdiction should be limited by eliminating appellate review of an order of remand, it specifically exempted the Civil Rights Removal Statute from this thrust. In doing this the Congress was reasserting again the high public importance it attached to the preservation of the civil rights removal jurisdiction.

It is within the spirit of the original Act of 1866 and the savings clause of 1887 that the present statutes must be construed. The savings clause in Section 5 of the Act of 1887 preserved the substance of appellate review originally available by way of mandamus in orders of remand in removal cases arising under the Civil Rights Removal Statute. Accordingly Section 1447 (d) must be presently construed as not foreclosing any appellate review of an order of remand in a proceeding arising under Section 1443.

There is a suggestion in a footnote to the opinion in Gay v. Ruff, supra, that the savings clause in Section 5 of the Act of 1887 and 1888 may not be effective. This comment is not required in any way for the holding of the Court, which is based upon the power of the Supreme Court to review orders of Circuit Courts of Appeals (Court of Appeals Act of 1891, 26 Stat. 826, 828). Gay v. Ruff is not a holding on the non-appealability of remand orders. It deals with the right of the Supreme Court to review by writ of certiorari the action of a Circuit Court of Appeals directing the remand of a cause to the state court. The issues there are totally different from those involved in the appealability of orders of remand by a district court.

The brief footnote comment rests upon the opinion in Cole v. Garland, which, as we have discussed at some length, is based upon a misconception of the state of the law in 1866 at the passage of the Civil Rights Removal Statute. Secondly, it seems to rest upon a footnote to the Index of Federal Statutes which implies that, although Section 5 was admittedly never repealed by the Judicial Code, it may have "no force independent of the remainder of the Act" since it alone remains unaffected by any express repeal. But this would render the specific failure of Congress to repeal Section 5 a meaningless gesture. The very direct act of refusing to repeal Section 5 is clear evidence of Congressional intention to preserve the impact of

Section 5 upon the right to review orders of remand.

But most important Gay v. Ruff does not purport to dispose of the issue of the effect of Section 5. Gay v. Ruff, if anything, emphasizes policy considerations underlying the purpose of the savings clause since it in effect upholds the right of the Supreme Court to consider the action of a Circuit Court of Appeals directing a District Court to remand a cause to the state courts. As a matter of fact, Gay v. Ruff itself virtually overrules an earlier case, German National Bank v. Speckert, 181 U.S. 405 (1901), which had denied the Supreme Court power to review actions of the Circuit Courts of Appeals ordering remand. Thus Gay v. Ruff, in its own holding, actually extends the sphere of reviewability in removal statutes. It clearly does not involve in any way the impact of the savings clause upon appealability in civil rights removal cases. The footnote at best is a casual comment resting upon the misconception which Cole v. Garland had written into the then existing case law.

B. A Construction of 28 U.S.C. 1447 (d) Which Would Foreclose Any Appellate Review of an Order Granting Remand of Proceedings Removed Under 28 U.S.C. 1443 Would Render that Statute Unconstitutional.

1. The effective denial of any opportunity for appellate review would deprive Negro petitioners for removal of the equal protection of the law.

Any construction of 1447 (d) which might result in foreclosing Negro petitioners for removal under the provisions of Section 1443 from appellate review of an order remanding their cases to a state court would effectively deprive these petitioners of the equal protection of the laws.

Such a construction would render the statute violative of the Fifth Amendment to the Federal Constitution. Section 1447 (d) and 1443 are federal statutes and thus governed by the Fifth Amendment rather than by the explicit guarantees of equal protection of the laws contained in the Fourteenth Amendment. However, the Supreme Court has authoritatively held that in the area of discriminatory action based upon race the Federal Government will be held under the Fifth Amendment to a standard no less rigid than that imposed upon the States by the Fourteenth Amendment. Bolling v. Sharpe, 347 U.S. 497; see also Korematsu v. United States, 323 U.S. 214. The unequal application of the laws in respect to Negro citizens "constitutes an arbitrary deprivation of their liberty in violation of the Due Process Clause." Bolling v. Sharpe, supra.

If Section 1447 (d) could be construed as cutting off all possible appellate review of an order remanding cases removed to the federal courts pursuant to the Civil Rights Removal Statute, the result would be a shocking deprivation of the equal protection of the laws. Under such an interpretation those petitioners for whom Congress specifically enacted the statute, members of the Negro race, see Strauder v. West Virginia, supra, would be completely denied any opportunity to review a rejection of their assertion of federal jurisdiction. On the other hand, the white state officials from whom these Negro petitioners seek the protection of the federal courts would continue to have their normal right to challenge a denial of a motion to remand on their appeal in chief from any judgment obtained in the federal court. Ex parte Roe, 234 U.S. 70; Edrington v. Jefferson, 111 U.S. 770; Johnson v. Butler Bros., 162 F.2d 87; Morgan v. Kroger Grocery and Baking Co., 96 F.2d 470.

The failure to afford any appellate review from the granting of a motion for a remand would result in the following posture of the matter: The Negro defendants seeking removal would have no right to obtain a federal review of their right to invoke the jurisdiction of the federal courts while the predominantly white state or city governments would have a full opportunity to obtain review of any order sustaining federal jurisdiction. Such striking discrimination in access to judicial relief would violate the most elementary concept of the requirement of the equal protection of law. The Slaughterhouse Cases, 16 Wall. 36, 21 L. Ed. 394; The Civil Rights Cases, supra; Strauder v. West Virginia, supra.

The fundamental thrust of the War Amendments was the elimination of discrimination in the enforcement of the law. Section 641 itself, the predecessor of 1443, was designed to guarantee that "the law in the States shall be the same for the black as for the white," Strauder v. West Virginia, supra. And as the Court said further in Strauder, the words of the Fourteenth Amendment contain "a necessary implication of a positive immunity, or right, most valuable to the colored race...the right to exemption from legal discrimination implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." Strauder v. West Virginia, supra.

From the first of the landmark decisions interpreting the scope of the guarantees of liberty enacted in the War Amendments to the most recent, compare The Slaughterhouse Cases, supra (1873) and Monroe v. Pape, 365 U.S. 175 (1961), the prohibition against unequal treatment in the enforcement of a legal right has always been in the center of any discussion of the equal protection and due process clauses. Limitations upon the ability of the Negro to enforce legal rights otherwise available to whites was the classic hallmark of a system of servitude and one of the principal "badges and indicia" of slavery. Civil Rights Cases, supra.

But a construction of the Civil Rights Removal Statute which would eliminate any possibility of appellate review of an order remanding while preserving the right to review of an order denying remand, see Ex parte Roe and cases cited supra, would result in the most flagrant discrimination against the class of Negro citizens in the enforcement of a judicial right itself designed for their protection.

The removal provisions in the Civil Rights Bill of 1866, later reenacted as Revised Statute 641, were designed as an important building block in the Congressional edifice constructed to implement and enforce the policies and commands of the Thirteenth and Fourteenth Amendments. Strauder v. West Virginia, supra; Ex parte Virginia, 100 U.S. 313. As the Court said in Strauder, the removal jurisdiction in civil rights cases contained in 641 was primarily designed, as was the Amendment itself, to guarantee that "the law in the States shall be the same for the black as for the white." Strauder, supra at p. 307. The Civil Rights Removal Statute is in the deepest sense a codification of the command of the Amendment that equal justice shall be afforded the Negro. The Court in Strauder made that amply clear:

> "This Act [641] puts in the form of a statute what had been substantially ordained by the constitutional amendment. It was a step towards enforcing the constitutional provisions. Section 641 was an advanced

> step, fully warranted, we think, by the 5th section of the Fourteenth Amendment."

It would be unthinkable that in a statute specifically designed to eliminate inequality in the enforcement of judicial rights inequality could be engrafted into the statute itself by judicial construction. Yet a construction of 1447 (d) which would sanction the total elimination of any appellate review of a remand order would have that precise effect. It would be patently absurd to attribute to the Congress which drafted the War Amendments and the entire structure of civil rights legislation an intention to allow gross inequality in the ability to enforce rights granted for the very purpose of eliminating inequality in the administration of law.

As we have seen in fact no such discrimination in the right to enforce the Civil Rights Removal Statute was present in the first years of its existence. The right to obtain appellate review of an assertion of federal jurisdiction was equally available to defendants objecting to a remand order by way of mandamus, Chicago and Alton R.R. Co. v. Wiswall, supra, as it was to plaintiffs objecting to the assertion of jurisdiction by way of an appeal from any final order in the cause in the federal court. Ex parte Roe and cases cited supra. To ignore the impact of the savings clause in the 1887 Act and to construe that Act and its successor, 1447 (d), as eliminating the Negro defendant's right to review while leaving undisturbed the white prosecutor's right to review would be to change a statutory instrument designed to achieve equality in the enforcement of law into its opposite. Any such construction would render the statute unconstitutional as violative of the Fifth Amendment. Bolling v. Sharpe, supra.

It may be argued that the constitutional implications of the 1901 decision of the Seventh Circuit in Cole v. Garland, supra, are now raised some sixty years after that opinion. It is sufficient to point out that only recently have the courts restored the Fourteenth Amendment and the panoply of civil rights statutes to their original strength and vitality. Compare Plessy v. Ferguson, 163 U.S. 537 with Brown v. Board of Education, 347 U.S. 483. See Monroe v. Pape, supra. To the degree that Cole v. Garland would sanction an unconstitutional construction of the Civil Rights Removal Statute that 1901 opinion will not be afforded persuasive weight. See Brown v. Board of Education, supra.

2. Any construction of 1447 (d) which would result in a failure to grant equally to all a right to review would render the statute violative of equal protection of the law and due process of law.

Only recently the Supreme Court has established in a series of important decisions that the denial of an equal opportunity to appellate review violates the equal protection and due process guarantees of the Fourteenth and Fifth Amendments. Draper v. Washington, _____U.S._____, 83 S. Ct. 774; Douglas v. Green, 363 U.S. 192; McCrary v. Indiana, 364 U.S. 277; Eskridge

v. Washington State Board, 357 U.S. 214; Griffin v. Illinois, 351 U.S. 12: cf. Coppedge v. United States, 369 U.S. 438.

A construction of 1447 (d) which would sanction the total elimination of any right of a defendant in a state criminal trial to seek review of an order remanding the case while leaving untouched the plaintiff's ability to seek review after final judgment in the federal court would raise serious questions of constitutionality under the principles enunciated in Draper v. Washington and cases cited supra.

It is fundamental that once an opportunity for appellate review is afforded the structure for review must meet the standards of the equal protection and due process clauses. Burns v. Ohio, 360 U.S. 252. Denying any right to appeal an order of remand, while permitting appeal of a denial of remand through review of the final judgment in the Federal court would be "an invidious discrimination" inconsistent with the guarantee of equal protection and due process of law. Eskridge v. Washington State Board; Griffin v. Illinois; Burns v. Ohio; all supra.

* * * * * * * * * * * *

The denial of any appellate review of a remand order in a civil rights removal proceeding would not merely render the statute unconstitutional under the Fifth Amendment. It would in effect deprive Negro citizens of any opportunity to utilize the important rights granted to them by Congress in the Civil Rights

Removal Statute.

It has become increasingly important for the federal courts to preserve the vitality and efficacy of those statutes designed by Congress to implement and enforce the fundamental guarantees of freedom and equality set forth in the Thirteenth and Fourteenth Amendments. Congress felt keenly the necessity of providing a forum free from the control and influence of local and state white power groups in which federal rights under attack in such state proceedings could be fairly and effectively protected. This was the significance of the removal provisions enacted originally in the Civil Rights Bill of 1866 and presently embodied in 28 U.S.C. 1443. See Strauder v. West Virginia, supra.

But if a Civil Rights Removal Statute is to have any vitality, if it was to play any role in protecting the Negro in his quest for the implementation of the constitutional promise of equality, it is essential that some opportunity for appellate review be available so that access to the Federal Court not be permanently cut off at the threshold of jurisdiction by District Court Judges, themselves often subject to the very local pressures and passions which the statute seeks to alleviate.

The need for this opportunity for appellate review was recognized from the outset. Whether the review was by mandamus from 1866 through 1875, or by appeal and writ of error from 1875 through 1887, review was always available from an order denying federal jurisdiction. And as we have seen in

1887 itself when review was eliminated in non-civil rights removal situations the savings clause of Section 5 carefully protected the existing right to review in civil rights removal cases.

However, in the years following 1887 the Civil Rights Removal Statutes, like many of the other civil rights provisions, compare Monroe v. Pape, supra, have been hampered and often rendered ineffective by judicial limitations which misconceived the very purpose of the Amendments themselves. See Brown v. Board of Education, supra. Certain of these limitations merely require appellate supervisory examination to restore the statute to the effective protector of federal rights it was originally designed to be. But unless the substance of appellate review which was originally available by way of mandamus is held to be available today, Section 1443 may well become an empty shell.

Three Congresses, in 1866, 1875 and 1887, reaffirmed the clear intention that the jurisdiction of the Civil Rights Removal Statute should remain inviolate as an essential judicial protection to the rights and liberties of the Negro. Yet the misconception embodied in Cole v. Garland, supra, unless rectified, may well result in frustrating this clear Congressional intent. If the availability of the Civil Rights Removal Statute in situations it was originally designed for rests solely and exclusively in the hands of local judges its utility will remain largely academic. Local judges are understandably often influenced by the very pressures and passions the statute was designed to alleviate. Only the substance of appellate review can preserve for Negro citizens and all others faced with prosecutions based upon the exercise of federal rights or threatened with trials in courts which will not give equal justice, the right to a forum capable of protecting and defending Constitutional liberties.

We have demonstrated here that a construction of 1447 (d) which would cut off all effective appellate review of an order remanding a case removed pursuant to the Civil Rights Removal Statute, would render these statutes unconstitutional in violation of the Fifth Amendment. In avoiding a construction which would render the statutes unconstitutional and in reaffirming the existence of an appellate review which was an essential attribute of the original statute, this Court would give powerful support to the intention of the enacting Congress that this statute should be an effective and valuable instrument in implementing and enforcing the fundamental guarantees of liberty and equality proclaimed in the Fourteenth Amendment.

Conclusion

This appeal presents a significant opportunity for this Court to give life and meaning to the Civil Rights Removal Statute, one of the cornerstones of the Reconstruction legislation. In "Racial Discrimination and the Federal Law: a Problem in Nullification", (63 Col. L.R. 1163, 1187-1191), Professor

Louis Lusky recently discussed the meaning and intent of Section 1443 and appellant submits selected portions of this article as its conclusion.

"The wording of Section 1443 strongly suggests that Congress intended the section to apply more broadly, and opportunity for reconsideration of the question may be presented by a set of cases now pending in the Fourth Circuit, in which an overwhelming factual showing has been made that equal rights secured by federal law are likely to be overridden in the state trial court.[106] . . .

"106. Baines v. City of Danville, 4th Cir., argued Sept. 23, 1963. The Memorandum for the United States, as Amicus Curiae in the district court, summarizes the facts as follows:

> The evidence adduced at the hearing in Danville on June 24-25, 1963, reveals, *inter alia*, that Judge Aiken, who will hear all of the pending contempt charges, was himself involved in attempting to disperse crowds of demonstrators at an earlier date. He also testified that he feared that trouble or violence of one kind or another might occur as a result of the demonstrations; indeed, at one point in his testimony he said that he considered that certain types of demonstrations which he had observed amounted to 'violence', and were 'sinister' and 'menacing', although no actual physical violence occurred. In view of this evidence, it is difficult to believe that petitioners will be able to obtain a fair trial before Judge Aiken. And if they cannot do so, whatever defense they may wish to assert grounded upon their right to demonstrate for the purpose of obtaining the equal protection of the laws may well go for nought in Judge Aiken's court. If that is true, then, we submit, petitioners should be classified as persons who are 'denied or cannot enforce in the courts of [the] State a right under any law providing for . . . equal civil rights . . . '

Indeed, there is much more involved here than the

"But even this will not be enough unless the appealability of remand orders, at least in racial discrimination and racial protest cases, is confirmed. . . . Considering the tremendous

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mere denial of a fair trial. The trial itself is being conducted in a most unjudicial atmosphere. The Judge conceded that he has been armed with a pistol which he removes only when reaching his office. One witness testified in fact that Judge Aiken was armed on the bench. However that may be, the fact remains that it is common knowledge that the trial Judge is armed, and this alone is bound to intimidate Negro citizens of Danville, to reduce their expectations of obtaining a fair trial in the Corporation Court, and thus to interfere with their campaign for equal civil rights. Moreover, the evidence reveals that Negro counsel, male and female, have been searched upon entering the courtroom; that the courtroom has been closed to the public except to the press); that perhaps 40-odd armed police officers were stationed throughout the courtroom during the two contempt trials which have already taken place; that the Judge had prepared, in advance of trial, a written memorandum of his decision finding the first two defendants guilty of contempt; and that Judge Aiken refused to examine into the contention made upon motion of the defendants just prior to the first trial, that the Corporation Court had no jurisdiction to proceed because, as this Court subsequently held on June 25, 1963, filing of the removal petitions transferred the cases to this Court and ousted the Corporation Court of any power to act upon them. This conduct of Judge Aiken surely suggests that he will be somewhat unreceptive to arguments grounded upon controlling federal law. Furthermore, Judge Aiken refused to release on bail, pending appeal, the two defendants convicted of contempt. Since the sentences imposed are relatively short, this ruling -- which Judge Aiken apparently intends to apply to all the pending contempt cases -- effectively denies appellate review of his judgments of guilt. And, finally, the practice of imposing 45 and 60-day jail terms in contested cases, while imposing either no confinement as in one case, or only a two-day term, as in the second case, upon the two defendants who pleaded guilty, simply exacerbates the situation by suggesting that those who choose to assert their rights will suffer the consequences.

The combination of a trier of fact who has apparently community pressures under which the Southern district courts operate in racial cases,[107] and the consequent desirability of enabling the courts of appeals to assume the onus of locally unpopular decisions, such a restriction is most unwise in cases of this type. A determined effort, based on respectable historical grounds, is now being made in the Fourth Circuit to

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> prejudged the issues and was a participant in the events culminating in the very charges to be tried, considered together with the general atmosphere of the proceedings and its inevitable results, makes it quite clear, it seems to us, that a fair trial cannot be had in the Corporation Court. But that is not all. It is not simply that whatever rights defendants have to demonstrate for the equal protection of the laws will be disregarded in the contempt trials. The situation is further aggravated by the fact that racial antagonism lies at the root of this denial. The entire controversy now before this Court stems from the conflict over Negro equality, and the proceedings in the Corporation Court, which are here challenged, are a direct result of this conflict. We do not suggest that Judge Aiken is racially prejudiced against the defendants; but a Court would have to close its eyes to the realities not to notice that the peculiar proceedings in the corporation court are the direct consequence of this racial conflict. Judges, and especially federal judges, are not 'forbidden to know as judges what [they] see as men.' [Ho Ah Kow v. Nunan, 12 Fed. Cas. 252 (Civil No. 6456) (C.C.D. Cal. 1879)] . . . The denial of a fair trial in these circumstances, then, is in the most fundamental sense grounded upon race.
>
> Under these circumstances, if the original intention of section 1443(1) were to govern these cases, we think they would be properly removed.

Id., pp. 5-8.

[107] See PELTASON, op. cit. supra note 59, at 10 passim (1961).

establish the proposition that Congress intended Section 1447 (d) to be inapplicable to civil rights cases.[108] * * *

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[108] See Baines v. City of Danville, 4th Cir., argued Sept. 23, 1963. The argument runs thus: (1) The 1866 Civil Rights Act, creating federal remedies for racial discrimination in the state courts, included a removal provision which is the predecessor of 28 U.S.C. § 1443 (1958), ch. 31, § 3, 14 Stat. 27 (1866). A similar provision appeared in the 1875 Civil Rights Act. Ch. 114, § 3, 18 Stat. 335 (1875). It was carried over into the Revised Statutes of 1878 as § 641. (2) Until 1875, remand orders were not reviewable on appeal or writ of error because they were interlocutory orders. They were, however, reviewable by writ of mandamus to the federal trial court, directing it to hear and decide the case. Railroad Co. v. Wiswall, 90 U.S. (23 Wall.) 507 (1874). (3) In 1875 they became reviewable by appeal and writ of error also, along with interlocutory orders generally. Civil Rights Act of 1875, ch. 137, § 5, 18 Stat. 472 (1875). (4) In 1887 the 1875 provision for review of interlocutory orders was repealed, but all rights under Rev. Stat. § 641 (1878) and certain other statutes were expressly saved. The effect was to leave untouched the reviewability of remand orders in § 641 cases not only by way of appeal and by writ of error, but by way of mandamus (in accordance with the practice since 1866). (5) The same saving clause was carried forward into the 1888 statute which was enacted to correct the enrollment of the 1887 statute. Ch. 866, § 5, 25 Stat. 436 (1888). (6) In Cole v. Garland, 107 Fed. 759 (7th Cir. 1901), an appeal case, the court held that no rights were saved by the saving clause in the 1887-1888 legislation because § 641 conferred no power to review a remand order (the review provision being contained in another statute). This was an erroneously restrictive interpretation of the saving clause, and frustrated its plain intention. Moreover, by implying that the only avenue for review of remand orders was to preserve the question through the state courts for ultimate Supreme Court review, the court in Cole v. Garland overlooked the possibility of review by mandamus, which had been untouched by the judiciary statutes of 1875, 1887, and 1888. (7) Cole v. Garland was accepted as a correct statement of the law, though its teaching was never reviewed by the Supreme Court; and in the 1911 codification, which was intended to systematize but not to change the law on matters such as this, S. Rep. No. 388, 61st Cong., 2d Sess., pt. 1, at 2, 28 (1910); H.R. Doc. No. 127, 61st Cong., 2d Sess., 23 (1910), the general prohibition upon review of remand orders by appeal or writ of error was carried forward without the supposedly nugatory savings clause. Even then, the right to mandamus was left untouched.

WHEREFORE, it is respectfully requested that this appeal be allowed and that the question of the propriety of the remand order be set down for briefing and argument in the normal course.

Respectfully submitted,

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(8) There has been no subsequent effort on the part of Congress to change the law. In the 1948 Judiciary Act, the prohibition upon appeal of remand orders was inadvertently repealed entirely, and for a brief period they became appealable. (The writ of error had meanwhile been abolished in 1928. Ch. 14, 45 Stat. 54 (1928).) This mistake was corrected by insertion, through a technical changes act, of the present 28 U.S.C. § 1447(d) (1958). The stated purpose was 'to remove any doubt that the former law as to the finality of an order of remand to a State court is continued.' H.R. Rep. No. 352, 81st Cong., 1st Sess., 15 (1949). Use of the language 'on appeal or otherwise' resulted from the assumption that Cole v. Garland stated the then-existing law correctly, but if read literally it would cut off three modes of review that had been available in civil rights cases at least since 1875: (a) appeal, (b) mandamus, and (c) Supreme Court review of state court judgments.

To summarize: In 1887 Congress evinced a clear intention to leave civil rights cases untouched by the broad prohibition upon appeal of remand orders. In no legislation since 1875 has there been any indication that Congress desired to change the law in this respect. And Congress has never indicated an intention to abolish review on mandamus, which has existed since 1866.

In Baines v. City of Danville, review is sought by way of mandamus as well as appeal."

CERTIFICATE

The undersigned, one of the attorneys for the appellants herein, certifies that on the 30th day of November, 1963, he mailed three copies of the attached brief to R. G. Van Buskirk, Esq., the attorney for the respondents, in a prepaid envelope addressed to said R. G. Van Buskirk, Esq.

William M. Kunstler

APPENDIX

HISTORY OF SUCCESSIVE LANGUAGE OF CIVIL RIGHTS REMOVAL STATUTES

1. Provisions for removing civil rights cases from state to federal courts first appeared in an act of Congress entitled Citizenship, April 9, 1866 - the Civil Rights Act of 1866.

Section 3.

"The district courts of the United States, within their respective districts, shall have, exclusively of the courts of the several states, cognizance of all crimes and offences committed against the provisions of this act, and also concurrently with the circuit courts of the United States, of all causes, civil and criminal, affecting persons who are denied or cannot enforce in the courts or judicial tribunals of the state or locality where they may be any of the rights secured to them by the first section of this act; and if any suit or prosecution, civil or criminal, has been or shall be commenced in any state court, against any such person, for any cause whatsoever, or against any officer, civil or military, or other person, for any arrest or imprisonment, trespass or wrongs done or committed by virtue or under color of authority derived from this act, or the act establishing a bureau for the relief of freedmen and refugees, and all acts amendatory thereof, or for refusing to do any act upon the ground that it would be inconsistent with this act, such defendant shall have the right to remove such cause for trial to the proper district or circuit court in the manner prescribed by the 'Act relating to habeas corpus and regulating judicial proceedings in certain cases', approved March 3, 1863, and all acts amendatory thereof." 12 Stat. 756.

2. The act of March 3, 1863 relating to habeas corpus described the procedure which was to be followed in removal cases. The pertinent portion of this act was amended on May 11, 1866 to read:

"The right of removal from the state court to the circuit court of the United States, provided in the fifth section of the act to which this is amendatory, may be exercised after the appearance of the defendant and the filing of his plea or other defence in said court, or at any term of said court subsequent to the term when the appearance is entered, and before a jury is empaneled to try the same; but nothing herein contained shall be held to abridge the right of such removal after final judgment in the state court, nor shall it be necessary in the state court to offer or give surety for the filing of copies in the circuit court of the United States; but, on the filing of the petition, verified as provided in said fifth section, the further proceedings in the state court shall cease, and not be resumed until a certificate under the seal of the circuit court of the United States, stating that petitioner has failed to file copies in the said circuit court, at the next term, is produced." 14 Stat. 46.

3. An act of Congress of May 31, 1870, the Civil Rights Act of 1870, re-enacted the Civil Rights Act of 1866 as section 18 of the former act. 16 Stat. 144.

4. With the publication of the Revised Statutes in 1873, the civil rights removal statute became Rev. Stat. 641.

Section 641.

> "When any civil suit or criminal prosecution is commenced in any state court, for any cause whatsoever, against any person who is denied or cannot enforce in the judicial tribunals of the State, or in the part of the State where such suit or prosecution is pending, any right secured to him by any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction of the United States, or against any officer, civil or military, or other person, for any arrest or imprisonment or other trespass or wrongs, made or committed by virtue of or under color of authority derived from any law providing for equal rights as aforesaid, or for refusing to do any act on the ground that it would be inconsistent with such law, such suit or prosecution may, upon the petition of such defendant, filed in said State court, at any time before the trial or final hearing of the cause, stating the facts and verified by oath, be removed for trial, into the next circuit court to be held in the district where it is pending. Upon the filing of such petition all further proceedings in the State courts shall cease, and shall not be resumed except as hereinafter provided. But all bail and other security given in such suit or prosecution shall continue in like force and effect as if the same had proceeded to final judgment and execution in the State court. It shall be the duty of the clerk of the State court to furnish such defendant, petitioning for removal, copies of said process against him, and of all pleadings, depositions, testimony, and other proceedings in the case. If such copies are filed by said petitioner in the circuit court on the first day of its session, the cause shall proceed thereon in the same manner as if it had been brought there by original process; and if the said clerk re-

fuses or neglects to furnish such copies, the petitioner may thereupon docket the case in the circuit court, and the said court shall then have jurisdiction therein, and may, upon proof of such refusal or neglect, of said clerk, and upon reasonable notice to the plaintiff, require the plaintiff to file a declaration, petition, or complaint in the cause; and, in case of his default, may order a nonsuit and dismiss the case at the costs of plaintiff, and such dismissal shall be a bar to any further suit touching the matter in controversy. But if, without such refusal or neglect of said clerk to furnish such copies and proof thereof, the petitioner for removal fails to file copies in the circuit court as herein provided, a certificate, under the seal of the circuit court, stating such failure, shall be given, and upon the production thereof in said State court, the cause shall proceed therein as if no petition for a removal had been filed." [see #1977].

5. The removal act of March 3, 1875 dealt only with removal in ordinary civil suits and effected no change in the wording of the civil rights removal statute, Rev. Stat. 641. However, Section 5 of Chapter 137 of the 1875 act entitled "An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes" provided:

Section 5.

"That if, in any suit commenced in a circuit court or removed from a state court to a circuit court of the United States, it shall appear to the satisfaction of the said circuit court, at any time after such suit has been brought or removed thereto, that such suit does not really and substantially involve a dispute or controversy properly within the jurisdiction of said circuit court, or that the parties to said suit have been improperly or collusively made or joined, either as plaintiffs or defendants, for the purpose of creating a case cognizable or removable under this act, the said circuit court shall proceed no further therein, but shall dismiss the suit or remand it to the court from which it was removed as justice may require, and shall make such order as to costs as shall be just; but the order of said circuit court dismissing or remanding said cause to the State Court shall be reviewable by the Supreme Court on writ of error or appeal, as the case may be." 18 Stat. 473.

6. This provision for review of remand orders was repealed as to ordinary civil suits by an act of Congress March 3, 1887 as follows:

Section 6.

> "That the last paragraph of section five of the act of Congress, approved March 3, 1875 entitled 'An act to determine the jurisdiction of circuit courts of the United States, and to regulate the removal of causes from State courts, and for other purposes' . . . be . . . hereby repealed . . ."

7. However, the civil rights removal statute was not affected by any of the repealing provisions of the 1887 act. This was provided for in section 5 of the act of 1887:

Section 5.

> "That nothing in this act shall be held deemed, or construed to repeal or affect any jurisdiction or right mentioned in . . . section 641 . . . of the Revised Statutes of the United States."

The wording of the civil rights removal statute remained unchanged with the enactment of the Judicial Code. This statute first appeared as Title 28 United States Code, section 74.

8. The present civil rights removal statute, 28 U.S.C. 1433, adopted June 25, 1948, is derived from the above statutes.

* * * * *

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 20960

CONGRESS OF RACIAL EQUALITY, ET AL,
Appellants,

versus

TOWN OF CLINTON and PARISH OF EAST FELICIANA,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(September 22, 1964.)

Before TUTTLE, Chief Judge, WISDOM, Circuit Judge, and McRAE, District Judge.

TUTTLE, Chief Judge: This appeal came on for preliminary consideration by the Court of the question of the appealability of an order of remand to the state courts of the state of Louisiana by the district court.

The litigation started by the filing of a suit on August 20, 1963, by the Town of Clinton and Parish of East Feliciana, Louisiana, against Congress of Racial Equality in the district court of the state of Louisiana. On that same day an ex parte temporary restraining order was issued restraining certain activities by the members of CORE. Appellants were ordered to show cause on October 28, 1963, why a preliminary injunction in the same terms as the temporary restraining order should not issue.

Prior to the return date of said hearing, the case was removed, in accordance with the provisions of 28 U.S.C.A. §1443, to the United States District Court for the Eastern District of Louisiana. Upon the filing by the appellees of a motion for remand, the trial court held a hearing and, on September 13, ordered the case remanded to the state court. The basis for the removal of the action to the district court in the first instance was the assertion by appellant that its members were denied or could not enforce in the courts of the state of Louisiana their constitutional rights to picket or demonstrate against racial conditions existing in the city of Clinton. The basis of the removal was Section 1443, which provides as follows:

> ". . . 1443. Civil rights cases.
>
> Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil

> rights of citizens of the United States, or of all persons within the jurisdiction thereof;
>
> (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law."

Thereafter, within the time provided in the statute, appellants filed their notice of appeal to this Court. Contending that unless the order of remand was stayed by this Court pending appeal, their constitutional rights would be denied them both by virtue of the injunctive relief granted against them in a state proceeding and because the hearing on the motion for temporary injunction was to be tried in a state court which maintained a segregated courtroom, appellants filed a petition for a stay of the order of remand pending appeal in this Court.

It appearing to a panel of this Court then in session that unless the hearing set for October 14th in the state court was stayed the issues raised therein would become moot, this Court entered an order, staying all proceedings in the state court for a period of ten days from and after October 14, 1963. Thereafter, this Court set down for hearing a motion by appellees to dissolve the said stay. This matter came on for hearing before another panel of this Court on October 22, 1963. Following this hearing, it appearing that a substantial issue had been raised touching on the appealability of the order of remand, notwithstanding the provision of Section 1447(d) of Title 28 U.S.C.A.,[1] we entered a further order that "the stay order dated October 14, 1963, be and the same is hereby continued in effect, the same to remain in effect until the further order of this Court."

Thereafter, the matter was set down for hearing by this Court solely on the question of appealability of an order of remand. Briefs were filed on behalf of the appellants. No briefs were filed and no appearance was made at the hearing on behalf of the City of Clinton or Parish of East Feliciana. The basis of appellants' argument that the provisions of Section 1447(d) of United States Code Annotated, quoted above, do not accurately state the law with respect to the appealability of orders of remand *in civil rights cases* is best stated in an article in the Columbia Law Review, written by Professor Louis Lusky, 63 Col. L.R. 1163, 1187-1191. The gist of the argument is that the 1866 Civil Rights Act created federal remedies for racial discrimination in the state courts. It included a removal provision which is the predecessor of 28 U.S.C. §1443. At that time remand orders were not reviewable on appeal or writ of error because they were interlocutory orders. They were, however, reviewable by writ of mandamus to the federal trial court directing it to hear and decide the case. Later they became reviewable by appeal and writ of error as were other interlocutory orders. In 1887 the provision for review of interlocutory orders was repealed, but all rights under the Civil Rights removal section of the law,

---

[1] This section states: "An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise."

Rev. Stat. Section 641 (1878), were expressly saved by the following clause: "Nothing in this section shall be held, deemed or construed to repeal or affect any jurisdictional right mentioned in Section 641." This savings clause has never been repealed by specific act of Congress, and the subsequent codification of the Judicial Code expressly rejected the idea that any prior acts were repealed. Thus, it is argued, the present provision to the effect that "an order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise," does not apply to removals under Section 1443, United States Code Annotated, the civil rights removal statute.

There being no brief in opposition to appellants' brief to assist the Court in passing on the correctness of the legal argument thus expounded, the Court directed counsel for appellants to furnish additional information relative to the legislative history of the several acts involved. This was subsequently done and the matter is now before us for consideration. In the meantime a petition for a stay pending appeal of remand orders, entered by the United States District Court for the Middle District of Florida, had been filed with this Court on behalf of the appellants in the case of *David Robinson, et al, v. State of Florida,* No. 21490, on this Court's docket. Since, therefore, a common question was raised in these cases, this Court, while granting the stay in the *Robinson* case as well as in an appeal of *Thomas Rachel, et al, v. State of Georgia,* No. 21354, on the docket of this Court, requested counsel for the state of Florida to file a brief in response to that filed by appellants in the present case. Such counsel stated that they would file such response. To date this brief has not been filed on behalf of the state of Florida.

The issue presented by the appellants here is a substantial one, and the briefs demonstrate that there is much more than a colorable basis for the contention made. However, we conclude that the Court need not delay longer in an effort to solve this interesting legal question, because the Civil Rights Act of 1964 includes, in Title IX thereof, a section which resolves this problem of appealability of remand orders. This section provides as follows:

> "Sec. 901. Title 28 of United States Code, Section 1447(d), is amended to read as follows: 'An order remanding a case to the state court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the state court from which it was removed pursuant to Section 1443 of this Title shall be reviewable by appeal or otherwise'."

We conclude that the enactment of this amendment by Congress has resolved the question of appealability of the orders of remand in this case.

This Court, in *In Re: Hurley Mercantile Company*, 1932, 5 Cir., 56 F. 2d 1023, 1025, adopted the view that "statutes regulating appeal are remedial and should have a liberal construction in furtherance of the right of appeal." The fact that this change in the law deals with procedure rather than with substance brings it within the generally accepted idea that "there is no vested right in any particular mode of procedural remedy." 11 Am. Jur., Constitutional Law Sec. 373. As an example of the decisions in which statutes deemed to be procedural have been applied to pending appeals, of which there are many, is the Fifth Circuit decision of *Bowles v. Strickland*, 1945, 151 F. 2d 419. There, the Price Administrator brought suit for overcharges without first obtaining the approval of the Secretary of Agriculture, which approval was required at the time the action was filed. The district court dismissed the action. Pending appeal, the Emergency Price Control Act was amended to eliminate the requirement of the Secretary's approval prior to bringing suit. This Court held that "as the amendment did not affect substantive rights but related only to the procedural machinery provided to enforce such rights, it applied to pending as well as to future suits." 151 F. 2d at 420.

This Court has also held that where Congress changes the law respecting the jurisdiction of an appellate court after an appeal is pending, the Court "acts according to the law as it is when judgment is to be rendered, and not as it was when the appeal was taken." *United States, ex rel Angelica v. Hammond*, 1938, 5 Cir., 99 F. 2d 557, cert. denied 306 U.S. 638. That case involved an appeal from judgments in habeas corpus cases brought to test warrants for removal of certain prisoners to other states for trial on federal offenses. At the time the appeal was filed the law permitted such an appeal. After the appeal was filed, however, an act prohibiting appeal from the kind of orders entered in this case became law. The Court held the act applicable and dismissed the pending appeal. That case, of course, represents the reverse from the situation in issue here, since there a pre-existing right of appeal was withdrawn, whereas, here, a right not existing at the time the notice of appeal was filed has been granted.

A similar case involving the reverse application of the principle that a procedural change in appealability statutes are given effect to the pending appeals in the appellate court is *Atchison, Topeka & Santa Fe Rwy. v. Brown,* 1949, 10 Cir., 175 F. 2d 554. The appeal in this case was filed during a period between 1948 and 1949 when the provision prohibiting review of remand orders in removed cases was inadvertently omitted from the revision of the Judicial Code of 1948. This was corrected by a technical amendment passed in 1949, but in the interval an appeal from a remand order was taken to the Court of Appeals for the Tenth Circuit. At the time the appeal was filed, the amendatory act had not been passed. But the act became law prior to the judgment of the Court of Appeals, and that Court, applying the new statute, dismissed the appeal.

We conclude, therefore, that the orders of remand in these civil rights cases are appealable. The stay order heretofore entered will, therefore, remain in effect until a decision by this Court on the merits of the appeal which will be docketed by the Clerk when the case is reached on the merits.

SEP 30 REC'D

MEMORANDUM FROM KUNSTLER KUNSTLER & KINOY

September 28, 1964

We enclose for your information a copy of the opinion just handed down on September 22 by the Fifth Circuit in CORE v. Clinton. It is an extremely important development in the area of removal of civil rights cases from state to federal courts under Title 28 U.S.C. 1443.

CORE v. Clinton was the first Fifth Circuit case last year in which a stay of a district court order of remand was granted. A stay was granted in early October by the Court of Appeals after the issue was raised with the Court that despite the wording of Section 1447(d) to the contrary, orders of remand in civil rights removal cases were nevertheless appealable. On the basis of this stay the Court of Appeals then granted stays during the year in a number of other removal cases including St. Augustine, Florida, Atlanta, Georgia, and a number of Mississippi proceedings.

The opinion just received written by Chief Judge Tuttle holds the following:

1. After restating the argument that orders of remand were appealable in civil rights removal cases under the original Civil Rights Acts, a position originally advanced before the Fourth Circuit in the Danville cases in the summer of 1963, Judge Tuttle states,

> "The issue presented by the appellants here is a substantial one, and the briefs demonstrate that there is a much more than colorable basis for the contention made."

2. The Court then states that the Circuit "need not delay longer in an effort to solve this interesting legal question, because the Civil Rights Act of 1964 includes in Title IX thereof, a section which resolves this problem of appealability of remand orders".

3. After holding that "Congress has resolved the question of appealability" by providing for an appeal in Section 1447(d) as amended, the Court then holds that since the amendment was "procedural" it has a retroactive effect on all pending appeals even though filed before the passage of the amendment.

4. Accordingly the Court holds that orders of remand in civil rights cases pending at the time of passage of the amendment are appealable.

5. The Court continued the stay order until a decision by the Court on the merits of the appeal. The appeal was ordered docketed on the merits.

The attorneys in CORE v. Clinton, are:

Collins, Douglas and Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Carl Rachlin, Esq.
165 West 46th Street
New York, N.Y. 10036

Kunstler Kunstler & Kinoy, Esqs.
511 Fifth Avenue
New York, N.Y. 10017

Letter
to Rimble

United States Court of Appeals for the Fifth Circuit.

NEW ORLEANS, LOUISIANA

Ordered that the following cases be assigned for hearing at NEW ORLEANS, LOUISIANA, in the Louisiana Wildlife & Fisheries Bldg., 400 Royal Street, on the days hereinafter named to-wit:

MONDAY, FEBRUARY 1, 1965

No. 21558. First Small Business Investment Co. of Louisiana vs. M. A. Holahan, Trustee of Crane Clothing Co., Inc., Bankrupt.
No. 21263. The Fidelity & Casualty Co. of New York vs. C/B "Mr. Kim", etc., et al.
No. 21296. Jessie M. Yates vs. Bernard J. Manale, et al.
No. 21123. James Henry Booker, Ezra McCraney and Riley McCraney vs. United States of America.

TUESDAY, FEBRUARY 2, 1965

No. 21243. Agricultural Transportation Assn. of Texas vs. Wilbur C. King, et al.
No. 21308. Brother International Sewing Machine Corp. of Louisiana vs. Vic Caracci (And Reverse Title).
No. 21344. Lucie Geddes vs. Daughters of Charity of St. Vincent De Paul, Inc.
No. 21309. Cora-Texas Manufacturing Co., Inc. vs. United States of America.

WEDNESDAY, FEBRUARY 3, 1965

No. 21669. Kenneth Charles Sibley vs. United States of America.
No. 21635. Complete Auto Transit, Inc. vs. Wayne Broyles Engineering Corp.
No. 20960. Congress of Racial Equality, et al. vs. Town of Clinton, et al.
No. 21736. James W. Barnes vs. United States of America.

THURSDAY, FEBRUARY 4, 1965

No. 21302. Kingsberry Homes Corp. vs. W. H. Collins, Trustee for Collins & Company, et al. (And Reverse Title).
No. 21478. National Labor Relations Board vs. Lyon, Inc.
No. 21458. Southern Implement Mfg. Co., Inc., et al. vs. Price C. McLemore.
No. 21473. Anthony J. Celebrezze, Secty. of Health, etc. vs. Lenora B. Deere.

FRIDAY, FEBRUARY 5, 1965

No. 19527. Floyd Charles Fallen vs. United States of America.
No. 21422. Leon R. Bellis vs. The Times Picayune.
No. 21832. James E. Grant vs. Cia Anonima Venezolana De Navegacion, et al.
No. 21939. Arnold C. Watson vs. Commercial Credit Corporation, et al.

MONDAY, FEBRUARY 8, 1965

No. 21281. Edward H. Russell and Doris B. Russell vs. Commissioner of Internal Revenue.
No. 21626. Mrs. Lillian C. Stevens, etc., et al. vs. Humble Oil & Refining Company.
No. 21556. National Union Indemnity Company vs. Kesk, Inc.
No. 21449. Mrs. Dagmar C. Joseph vs. United States of America.

TUESDAY, FEBRUARY 9, 1965

No. 21339. Union Producing Company vs. Federal Power Commission.
No. 21617. Herbert Robert Murray vs. State of Louisiana, et al.
No. 21552. Robert Grant vs. Sutorbilt Corporation, et al.
No. 21314. James Lawrence Ray vs. United States of America.

WEDNESDAY, FEBRUARY 10, 1965

No. 21436. National Labor Relations Board vs. The Great Atlantic & Pacific Tea Company, Inc.
No. 21335. In the Matter of Louisiana Investment & Loan Corporation.
No. 21373. Archie McConnell vs. The Travelers Indemnity Co., et al.
No. 21730. Addie Sue Brown, Annie Bell Harris, Charles Hosley, Samuel Johnson, Roscoe Jones, Alvin Packer, George Smith, Lelia Waterhouse and Freddie Lee Watson vs. City of Meridian.

THURSDAY, FEBRUARY 11, 1965

No. 21462. Bloomfield Steamship Co. vs. Charles S. Haight, et al.
No. 21460. Lagarde Finance Co. vs. Nancy D. Vinet (And Reverse Title).
No. 21160. William N. Burns, et al. vs. Travelers Ins. Co., et al.
No. 21461. George Bankston vs. Aetna Casualty and Surety Co., Hartford, Conn.

FRIDAY, FEBRUARY 12, 1965

No. 21567. Sarah Louise McCoy, etc. vs. Louisiana State Board of Education, et al.
No. 21495. James H. Thompson and Mrs. LaVaye Thompson vs. James T. Staples, et al.
No. 21630. Herbert Goodwyn vs. The Dredge Ginger Ann, etc., et al.
No. 21616. Vernell Christopher vs. United States of America.

EDWARD W. WADSWORTH,
Clerk of the United States Court of Appeals
for the Fifth Circuit.

BY THE COURT:

NEW ORLEANS, LA., December 10, 1964.

NOTE—In view of the Court's practice of studying all briefs in advance of the hearing, the attention of counsel is especially called to the requirements of filing briefs on time in accordance with the Court's rules.

Counsel desiring to present oral argument will log in with the Clerk's office by 9:00 A.M. on the date of hearing.

COURT CONVENES AT 9:30 A.M.

E. S. Upton Printing Co.
New Orleans, Louisiana—12/10/64—375

No. 21567. Sarah Louise McCoy, etc. vs. Louisiana State Board of Education, et al.
No. 21495. James H. Thompson and Mrs. LaVaye Thompson vs. James T. Staples, et al.
No. 21630. Herbert Goodwyn vs. The Dredge Ginger Ann, etc., et al.
No. 21616. Vernell Christopher vs. United States of America.

EDWARD W. WADSWORTH,
Clerk of the United States Court of Appeals
for the Fifth Circuit.

BY THE COURT:

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COURT CONVENES AT 9:30 A.M.

E. S. Upton Printing Co.
New Orleans, Louisiana—12/10/64—375

This form must be filled in by counsel, signed, detached, and promptly returned to:

Edward W. Wadsworth, Clerk
U. S. Court of Appeals, Fifth Circuit
New Orleans, Louisiana

...., 1964

Dear Sir:

I hereby acknowledge receipt of copy of your printed calendar showing my case in re:
No. ...., ... vs. ....,
assigned for hearing at 9:30 A. M. on ...., 1965, in the Louisiana Wildlife & Fisheries Bldg., Room 408, 400 Royal Street, at New Orleans, Louisiana. The Clerk's Office will be advised by 9:00 A. M., on the date the case is assigned the name of counsel who will present oral argument.

....

Attorney for ....

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N.Y.
MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

CABLE ADDRESS
"KANDKLEX"

RECEIVED
DEC 4 1963
VLADECK & ELIAS

December 3, 1963

Carl Rachlin, Esq.
280 Broadway
New York, New York

Dear Carl:

I am happy to enclose a copy of our brief in CORE v. CLINTON. I think that it is persuasive and you will notice that we have included an answer to Judge Brown's query about the GAY v. RUFF footnote as well as the statutory language material.

I have asked the Bar Association to forward the stenographic bill directly to you. Our additional bill is $250.00 for the preparation of the brief and I am enclosing our statement for this appeal which includes everything to date.

As ever,

Bill

William M. Kunstler

WMK:bkf
Enclosures

KUNSTLER & KUNSTLER
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N. Y.
MURRAY HILL 2-8317

DEC 4 1963

12/3

Dear Jim:

Here is the CORE v. Clinton brief. Since there is a possibility that it might result in a landmark decision, I thought that you might like a copy for your files.

Best regards,

Bill

CRF v Clinton

RECEIVED
DEC 11 1963
VLADECK & ELIAS

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK 17, N.Y.
MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

CABLE ADDRESS
"KANDKLEX"

December 6, 1963

Carl Rachlin, Esq.
280 Broadway
New York, New York

Dear Carl:

I am enclosing the bill in the Clinton case for mimeographing enough copies of the brief for the Fifth Circuit. Twenty-five copies had to go to the Court and three to the other side. I also sent copies to all counsel of record. I have a few left over for whatever use you may have for them.

It would be appreciated if the enclosed bill and our own invoices were paid at once. It is difficult enough to stay in business with a civil rights practice and the above request is urgently made. I know that you will give it your immediate attention.

Cordially,

Bill

William M. Kunstler

WMK:bkf
Enclosure

7/ca

January 5, [illegible]

William Kunstler, Esq.
511 Fifth Avenue
New York, N.Y.

Re: CORE v. Clinton

Dear Bill,

The Clerk of the Fifth Circuit has advised us that the above case will be heard on February 3rd.

I have discussed the matter with Nils Douglas and, particularly because of the financial condition of CORE, we see no useful purpose to this argument, in light of what you have already done in the case.

I regret that we can't afford to pay any expenses whatsoever but, unhappily, as you undoubtedly know, we are facing a major deficit.

Sincerely,

Carl Rachlin
General Counsel

CC: Nils Douglas, Esq.

CR:hdl

1/4/65

Carl

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b. 3, 1965

Clinton

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Nils

SEP 25 REC'D

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

September 22, 1964

ROOM 408 - 400 ROYA
NEW ORLEANS, LA. 70

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: **No. 20960 - Congress of Racial Equality, et al**
-vs- Town of Clinton and Parish of East Feli

Gentlemen:

The following action has this day been taken in the above case:

( ) An extension of time for filing and docketing the record on appeal has been granted to and including

( ) An extension of time for filing designation as to printing of the record has been granted to and including

( ) An extension of time for filing brief for ( ) appellant ( ) appellee has been granted to and including

(X) The Court's opinion has this day been rendered and a copy thereof is enclosed. **Judge McRae's dissent-opinion to be published lat**

( ) An order has been entered extending the time for filing a petition for rehearing to and including

( ) Order enclosed has been entered.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Clara R. James
Deputy Clerk

Messrs. Nils R. Douglas and
Robert F. Collins
Mr. William M. Kunstler
Mr. Carl Rachlin
Mr. Murphy W. Bell
Mr. F. B. McKissick

Mr. Richard H. Kilbourne
Mr. Arthur Kinoy

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

December 16, 1964

DEC 21 REC'D

AIR MAIL

Mr. William M. Kunstler
Attorney at Law
511 Fifth Avenue
New York, New York 10017

Re: No. 20960 - Congress of Racial Equality, et al -vs- Town of Clinton and Parish of East Feliciana

Dear Sir:

It would be greatly appreciated if your would forward at least four additional copies of your Supplementary Memorandum of Appellants filed in this office on May 12, 1964. Same is needed for distribution to the new panel of this Court assigned to hear the referenced case on February 3, 1965, in New Orleans.

Your prompt attention to this matter will be greatly appreciated.

Yours truly,

EDWARD W. WADSWORTH
Clerk

By R. E. Windhorst, Jr.
R. E. Windhorst, Jr.
Deputy Clerk

REW,Jr.:bja
cc: Messrs. Robert F. Collins,
Nils R. Douglas &
Lolis E. Elie
Mr. Murphy Bell
✓Mr. Carl Rachlin
Mr. F. B. McKissick
Mr. Arthur Kinoy

✓

KUNSTLER KUNSTLER & KINOY
ATTORNEYS AT LAW
511 FIFTH AVENUE
NEW YORK, N. Y. 10017
MURRAY HILL 2-8317

WILLIAM M. KUNSTLER
MICHAEL J. KUNSTLER
ARTHUR KINOY

CABLE ADDRESS
"KANDKLEX"

January 8, 1965

JAN 12 REC'D

Carl Rachlin, Esq.
165 West 46th Street
New York, N. Y. 10036

Re: CORE v. Clinton

Dear Carl:

Thanks for your letter about the unavailability of funds to pay for the expenses of arguing the appeal in the above case. Because we do not feel that any case in the movement, and particularly one as important as this, should hinge on the lack of funds, we will handle it without any expectation of fee or expenses. We probably have to be in New Orleans around the time of argument anyway and will handle the appeal. Incidentally, have just filed additional material with the Court and look forward to a successful conclusion to the case.

Arthur and I both feel that since this is the key case in the Fifth Circuit on removal, it would be very harmful to the movement to drop it at this critical point. In addition, the Court expects oral argument and it would not be professionally responsible for us not to be there.

May we take this opportunity to wish you a very stimulating New Year. We look forward to your legal conference which was such a success last year.

As ever,

Bill

William M. Kunstler

WMK:bkf

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

March 9, 1965

MAR 15 REC'D

Clerk
United States District Court
New Orleans, Louisiana

Re:No. 20960 - Congress of Racial Equality, Et Al vs. Town of Clinton & Parish of East Feliciana (Your No. 2840-Civil)

Dear Sir:

Enclosed is a certified copy of the judgment of this Court in the above case, issued as and for the mandate. **All costs have been paid.**

Please acknowledge receipt.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By Alan R. Jones
Chief Deputy Clerk

encs.

cc: (Letter Only)
Clerk, U. S. District Court, Baton Rouge, La.
Messrs. Nils R. Douglas
Robert F. Collins
✓Mr. William M. Kunstler
✓Mr. Carl Rachlin
Mr. Murphy W. Bell
Mr. F. B. McKissick
Mr. R. G. Van Buskirk
Mr. Richard H. Kilbourne

P. S. to Clerk: Returned herewith is the record on appeal in this case.

Mss
546

SEDFRE.-

CORE vs DOUGLAS et al., 1962

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Core v Douglas MAY 7 1962

I An injunction would violate appellant's rights to freedom of speech, association and assembly in contravention of the First Amendment to the Constitution.

The right of CORE and its members to assist, encourage, associate and assemble with those attempting to integrate interstate bus terminals and facilities is a protected right under the First Amendment to our Constitution. As the Supreme Court stated in De Jonge v Oregon 299 US 353 (   )

> "The question is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." 299 US at 365

The purpose of CORE's activity is to promote peaceful integration and such activity is immune from state or federal intervention under the First Amendment, due process equal protection and the commerce clause in the Constitution. Boynton v Com. of Virginia 364 US 456 (1960), Aaron v Cooper 257 F 2d 33 (1961), Burton v Wilmington Parking Authority 365 US 715. As the Supreme Court stated in N.A.A.C.P. v Alabama 357 US 449 at 461,

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly."

De Jonge v Oregon 299 US 353, 364; Thomas v Collins 323 US 516, 530. It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment which embraces freedom of speech. See: Gitlow v N. Y. 268 US 652, 666; Palko v Conn. 320 US 319, 324; Cantwell v Conn. 310 US 296, 303; Staub v City of Baxley 355 US 313, 321.

CORE's actions in supporting and encouraging the use of terminal facilities are protected by law for free trade in ideas means free trade in the opportunity to persuade to action, not merely to describe facts, Abrams v United States 250 US 616; I Annals of Congress 759-760.

CORE members' rights to free speech, coupled with their cognate rights of peaceful assembly, are inviolate irrespective of motive, for as Justice Harlan stated in a concurring opinion to Garner v State of Louisiana/82 S. Ct. 248 (Dec. 1961) where a conviction for peaceful sit-ins was declared invalid under due process,

> "There was more to the conduct of those petitioners than a bare desire to remain at the 'white' lunch counter and their refusal of a police request to move from the counter. We would surely have to be blind not to recognize that petitioners were sitting at those counters, where they knew they would not be served, in order to demonstrate that their race was being segregated in dining facilities in this part of the country. Such a demonstration, in the circumstances of these two cases, is as much a part of the 'free trade in ideas', Abrams v U.S. 250 US 616, 630, 40 S. CA 17, (Holmes J. dissenting), as is verbal expression more commonly thought of as speech."

The resentment, hostility and antagonism of the local populace occasioned, it is alleged, by the visit of CORE and its members to McComb City cannot serve to stifle peaceful speech and conduct, for it would be unconstitutional to ban or prohibit protected activity which was calculated merely to invite dispute or bring about a condition of unrest. Stronberg v California 283 US 359 (1931). As stated by the Supreme Court in Terminiello v Chicago 337 US 1 at 4:

> "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and pre-conceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, Chaplinsky v N.H. pp. 571-72, is never the less protected against censorship or punishment unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest."

The lack of clear and present danger to serious substantive evil is attested to by Appellee's witnesses who testified that the police could have controlled each and every disturbance. (   )

The Chaplinsky v N.H. case concerned violent speech, not an issue here.

The only outstanding Supreme Court case permitting the suppression of free speech and assembly is Feiner v People of State of N. Y. 340 US 315 (1951) where a divided court upheld the arrest of a speaker who had forced pedestrians to walk on the street by collecting a crowd on a public sidewalk, and who used sound amplifiers to indulge in name calling and verbal incitement to the use of arms. In the Feiner case, the New York Court of Appeals found that in addition to disrupting pedestrian and vehicle traffic on the sidewalk and street and refusing to accede to the requests of an officer, defendant Feiner's conduct threatened a clear and present danger of disorder, violence, riot and other immediate threats to public safety, peace and order. The Feiner facts are utterly without parallel to the instant case of peaceful advocacy of what has been Federally decreed as the Law of the Land. Boynton v Com. of Virginia 364 US 456 (1960); Burton v Wilmington Parking Authority 365 US 715; Mayor & City Council v Dawson 350 US 877; Holmes v City of Atlanta 350 US 879; Gayle v Browder 352 US 903. In the present situation vidence was occasional and sporadic, easily amenable to proper regulation by local police authorities. (T.R.   )

An injunction against CORE and members from pursuing their lawful activities because of past occasions of violence or disorder would run afoul of Kunz v N. Y. 340 US 29 (1951) decided on the same day as the Fiener case. In Kunz it was held that an unpopular speaker cannot be denied the right to speak and assemble even though his past performances had excited third party interference and it was reasonably foreseeable that if a permit to speak were granted violence would ensue.

The Kunz defendant made continued assertions of intentions to deliver violently insulting addresses in derogation of other religious faiths. Notwithstanding the past conduct and announced intentions, the Supreme Court held that an ordinance which would forbid in advance his rights to speak freely and assemble was unconstitutional as a forbidden restraint on protected freedoms of the First Amendment.

Whether the process be by ordinance, arrest or injunction, the fundamental rights to free association, speech, advocacy and assembly may not be abridged because persons threaten to stage a riot or because peace officials believe or are afraid that breaches of the peace will occur if the rights are exercised. In Sellers v Johnson 163 F 2d 877 (1947) Jehovah's witnesses were prevented from staging a meeting because town officials feared mob violence. The Federal Court of Appeals had this to say:

or what

> "The theory that a group of individuals may be deprived of their constitutional rights of assembly, speech and worship if they have become so unpopular with or offensive to the people of a community that their presence in a public park to deliver a Bible lecture is likely to result in riot and bloodshed, is interesting but somewhat difficult to accept. Under such a doctrine unpopular political, racial and religious groups might find themselves virtually inarticulate. Certainly the fundamental rights to assemble, speak and to worship cannot be abridged merely because persons threaten to stage a riot or

> because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised."
> (165 F 2d 877 at 881)

The English cases are in agreement. In __Beatty v Gillbanks__ 9 O.B.D. 308 (1882) the Salvation Army paraded peaceably and for a lawful purpose but with the knowledge that their assembly would be opposed, and with good reason to believe that a breach of the peace would be committed by those who opposed it. Yet it was held that the Salvation Army was not guilty of an unlawful assembly for to so hold would amount to saying that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act.

Appellee's moving papers in this injunctive proceeding ask a Federal Court to restrain defendant CORE and its members from encouragement and support of persons using terminal facilities in the City of McComb "for the purpose of fomenting violence or provoking breaches of the peace." This bald, gratuitous and wholly unsupported assertion that CORE assists its members in "fomenting violence and provoking breaches of the peace" is based on the erroneous assumption that the exercise of lawful and protected freedoms can __ipso facto__ be "the legal cause" of violence and disorder.

> "A speaker arousing third party hostility no more causes the breach of the peace than a man whose pocket is picked causes the theft by wearing a watch."
> Dicey, Law of the Constitution 273 (9th Ed. 1939) at 274.

By equating free speech and association (which a state may not regulate) with violence (which may be regulated) appellees seek to bring the whole within official control. cf Justice Jackson's argument in a concurring opinion to Thomas v Collins 323 US 516 at 548-9, where he argues that speech of political malcontents is sought to be reached by associating it with some variety of sedition. As is stated in Cantwell v Conn. 310 US 302 at 308:

> "A state may not suppress free communication of views, religious or other, under the guise of conserving desirable conditions."

An injunction which jeopardizes the free speech and assembly rights of CORE and its members should not issue to prevent occasional and sporadic violence by others, a matter too suppositious and subjective for suppression. Stromberg v California 283 US 359 (1931).

II An injunction would violate the privileges and immunities of CORE's members.

7

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Art. IV, Sect. 2.

An injunction forbidding CORE to assist, finance or encourage integration in the Southern areas or the City of McComb would deny to CORE's members the right to freely associate one with another in common cause for political and social betterment. Such a denial would contravene the privilege of people of any race, religion or political faiths to associate for the advancement of their interests. Goshorn v Bar Assn. of Dist. of Columbia 152 F. Supp. 300 (1957); Schwimmer v United States 219 US 644; Macintosh v United States 283 US 605; cf. United States v Congress of Industrial Organizations 77 F. Supp. 355, aff 335 US 106 (1947) where provision of Corrupt Practices Act making it unlawful for any corporation or labor organization to make expenditures in connection with election to federal office was declared unconstitutional.

In Hague v Committee for Industrial Organizations, 307 US 500 (1939), the question was presented whether freedom to disseminate information concerning the provisions of the National Labor Relations Act and to discuss the Act and the opportunities and advantages offered by it was a privilege or immunity of a citizen of the United States. Mr. Justice Butler, speaking for the Court held that it was.

> "Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against state abridgment, it is clear that the right peaceably to assemble and to discuss these topics and to communicate respecting them whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects."

See the Slaughter House Cases 16 Wall 36; Twining v N. J. 211 US 78; Duncan v Missouri 152 US 377; Maxwell v Bugbee 250 US 525; Hamilton v Regents of Univ. of Cal. 293 US 245.

In Hague an injunction was sought to restrain several city ordinances which provided that permits to conduct public assemblies or parades could be denied to prevent "riots, disturbances or disorderly conduct", 307 US at 516. The Supreme Court held that such a standard of granting permits was sufficiently vague as to allow "the arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking will undoubtedly prevent such eventualities." 307 US at 516.

The very fact that a United States District Court has issued an injunction against CORE without a shred of evidence to show that its members designed or conspired deliberately to cause violence or disorder demonstrates that CORE's members will be loathe and hesitant to organize and freely associate one with another in peaceful demonstration of common aims lest, if violence or disorder occur, they be held in contempt of Court. The outstanding injunction is, therefore, a real and substantial restraint upon their privileges and liberties as United States citizens.

III The District Court injunction is an illegal prior restraint upon free expression.

The injunction below denies to CORE and its members, in advance of proven clear and present danger, cf Cantwell v State of Conn. 310 US 296 (1940), the rights of free speech, association and assembly. This kind of restraint was forbidden by the Supreme Court of the United States in Thomas v Collins 323 US 516 (1944) where a Texas Court had enjoined a defendant from soliciting union members without a permit. The defendant spoke to an assembly of union members and was convicted of contempt of court. The Supreme Court reasoned that the threat of a restraining order, backed by the power of contempt process hung over every word of defendant's speech and was, therefore, a previous restraint on rights to free speech. An injunction against CORE and its members is analagous in its operation to forbidden previous restraints by the denial of a permit to speak in public, Kunz v People of State of N. Y. 340 US 290; Saia v People of State of N. Y. 334 US 558; Lovell v City of Griffen 303 US 444, or conduct an assembly, Hague v C.I.O. 307 US 496, or solicit for religious causes, Cantwell v Conn. 310 US 296. The very existence of a District Court injunction generates such a momentum of fear as to itself constitute a prior restraint, cf. Stapleton v Mitchell 60 F. Supp. 51 (1945).

In addition, the injunction, by branding CORE as a "fomenter of violence", makes past communications and associations an impermissible restraint on future activity. cf. Near v Minn. 283 US 697 (1931)

IV The injunction is unconstitutionally vague.

The District Court injunction forces CORE to risk the perils of contempt for "f~~er~~omenting violence" if CORE should continue to assist those promoting peaceful integration in an atmosphere charged with local prejudice. The ambit of conduct which might be fairly charged as "f~~er~~omentive of violence" is completely unspecified. And defendant CORE is left, therefore, inadequately warned and uncertain as to whether otherwise protected conduct, such as peaceful advocacy, is proscribed by the terms of the injunction. cf. Thomson v City of Louisville 362 US 199; Chaplensky v New Hampshire 315 US 568. Restrictions on free expression demand higher standards, Winters v People of State of N. Y. 333 US 507. cf. 109 U. of Pa L Rev 67 (1960). The injunction below is as vague as the unconstitutional statute in Herndon v Lowry 301 US 242 (1937) where a defendant was convicted under a Georgia insurrection statute making unlawful "any attempt by persuasion or otherwise to induce others to join in any combined resistance to the lawful authority of the State." The United States Supreme Court reversed defendant's conviction:

> ". . . If, by the exercise of p~~h~~rophecy, he can forecast that, as a result of a chain of causation, following his proposed action a group may arise at some future date which will resort to force, he is bound to make the prophecy and abstain, under pain of punishment, possibly of execution . . .

> ". . . The Law as thus construed, licences the jury to create its own standard in each case . . .
>
> ". . .No reasonable standard of guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment."
>
> 301 US at 261-64

V The injunction in the District Court is sought for the unlawful purpose of hindrance and delay in integrating McComb City bus terminal facilities.

On November 25, 1961 a three-judge Federal Court sitting in the Southern District of Mississippi issued at the request of the United States a preliminary injunction enjoining the maintenance of signs or other segregation practices in the McComb bus terminals and from failing or refusing to comply with the recent order of the Interstate Commerce Commission 49 C.F.R. requiring the end of racial segregation in all interstate carriers and terminals. United States v Mayor and Selectman of McComb City, Civil Action # 3215.

The failure of the City of McComb to implement this order by adequate police protection in the area of the bus station (Tr. p) together with plaintiff McGehee's uncontradicted testimony that he would refuse to serve Negroes at the white lunch counter (Tr. p), together with the fact that McGehee has closed his restaurant (Tr. p.), demonstrate that the injunction sought by the City and McGehee as plaintiffs was for the purpose of foreclosing defendants from their rights under the three-judge order and was sought for the purpose of suppressing and preventing any tests as to compliance with the order and regulations of the Interstate Commerce Commission.

The injunction itself signed on December 22, 1961 enjoins CORE from sponsoring, encouraging or financing persons to utilize the terminals "for the purpose of testing the tempers and reactions of the local citizens of said city..." There can be no doubt whatever of the purposes for which the injunction was sought. It was either sought to obviate unrest and disorder at the terminals or for the purpose of evading Federal Court orders.

If the purpose be the former, that is, to avoid violence, it is well settled that this is impermissible grounds for no court may suppress free communications of views, religious or otherwise, under the guise of conserving desirable conditions. *Cantwell v Conn.* 310 US 302. Official suppression cannot be made a substitute for the duty of maintain order. *Hague v C.I.O.* 307 US 496 (1939) at 516; *Rockwell v Morris* 26 Misc. 2d 229 Rev. 211 N.Y.S. 2d 25 (1962)

The language of the Court of Appeals in *Aaron v Cooper* 257 F. 2d/33 (1961) in denying a petition to postpone

Court-approved integration is strictly and precisely opposite to the instant injunctive proceeding.

> "An impossible situation could well develop if the District Court's order were affirmed. Every school district in which integration is publicly opposed by overt acts would have 'justifiable excuse' to petition the Courts for delay and suspension in integration programs. An affirmation of 'temporary delay' in Little Rock would amount to an open invitation to elements in other districts to overtly act out public opposition through violent and unlawful means." (257 F. 2d at 40)

In the Cooper case on appeal, the Supreme Court in Cooper v Aaron 358 US 1 (1958) was equally emphatic:

> "It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is and important as is the preservation of public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution."

If the purpose of the injunction be to obviate the necessity of integration in McComb City such, accomplished by an injunction, would be an illegal method of delay in the enforcement of statutes and administrative orders of the Federal Government. Bay Petroleum v Corp. Commissioner of Kansas 36 F. Supp. 66 (D.C. Kan. 1941)

VI An outstanding injunction against CORE, branding it as a "fomenter of violence", is false in fact and legally damaging to CORE's reputation and membership.

The Supreme Court of the United States in Truly v Wanzer et al 5 How. 141, 46 US 141 said in reference to granting an injunction:

> "There is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuing of an injunction. It is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate and commensurate remedy in damages." (46 US at 142)

The District Court injunction below on a record absolutely barren of proof of CORE conduct that was unlawful or even not commendable has labeled CORE as a fomenter of violence and breacher of the peace.

Such an injunction is itself damaging to a national organization whose purposes are entirely peaceful and American in the best sense of the word and which enjoys a reputation for non-violence as exemplified by the fact that, despite many so-called Freedom rides, no member or participant associated with CORE has ever been arrested or convicted for disorderly conduct or assault. The injunction should be vacated, for as was stated by the Court of Appeals Second Circuit in International Register Co. v Recording Fare Register Co. 151 F. 199:

> "The mere fact of the issuance of any sort of injunction stigmatizes the defendants as having done or threatened to do some illegal or inequitable act of such a nature as to justify such extraordinary relief, and, if cleverly advertised, may hurt the defendants in their business world." (151 F. at 202)

cf. Lenroot v Interstate Bakeries Corp. 55 F. Supp. 234 (D.C. Missouri 1944)

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United States Court of Appeals

Fifth Circuit

No. 19724

THE CONGRESS OF RACIAL EQUALITY, JOHN DOE and MARY DOE,
Appellants,

versus

C. H. DOUGLAS, Individually and as Mayor of the CITY OF McCOMB CITY, MISSISSIPPI, and MR. & MRS. AUBREY McGEHEE,
Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

BRIEF FOR APPELLANTS

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TABLE OF CONTENTS

PAGE

Statement 1

Abstract of Facts 2

Statement of the Case 4

Exceptions to the Findings of the District Court 5

Argument

I—The injunction violates appellants' rights to freedom of speech, association and assembly in contravention of Constitutional guarantees 8

II—The injunction violates the privileges and immunities of CORE's members 14

III—The injunction is an illegal prior restraint upon free expression 15

IV—The injunction is unconstitutionally vague 16

V—The injunction was sought for the unlawful purpose of hindrance and delay in integrating McComb City bus terminal facilities 17

VI—The injunction against CORE, branding it as a "fomenter of violence", is false in fact and legally damaging to CORE's reputation and membership 19

Conclusion 20

Cases Cited

Aaron v. Cooper, 257 F. 2d 33 (1958) 18

Abrams v. United States, 250 U. S. 616 (1919) 9

PAGE

Bay Petroleum v. Corp. Comm. of Kansas, 36 F. Supp. (D. C. Kan. 1940) 19

Beatty v. Gillbanks, 9 O. B. D. 308 (1882) 12

Boynton v. Virginia, 364 U. S. 450 (1960) 8

Burton v. Wilmington Parking Authority, 365 U. S. 715 (1961) 8

Cantwell v. Conn., 310 U. S. 296 (1940) 13, 16

Chaplinsky v. New Hampshire, 315 U. S. 568 (1942) 10, 16, 18

Cooper v. Aaron, 358 U. S. 1 (1958) 19

De Jonge v. Oregon, 299 U. S. 353 (1937) 8

Duncan v. Missouri, 152 U. S. 377 (1894) 15

Feiner v. People of N. Y., 340 U. S. 315 (1951) 10, 11

Garner v. Louisiana, 82 S. Ct. 248 (1961) 9

Gayle v. Browder, 352 U. S. 903 (1956) 10

Gitlow v. N. Y., 268 U. S. 652 (1925) 9

Goshorn v. Bar Assoc. of Dist. of Columbia, 152 F. Supp. 300 (D. C. Col. 1957) 14

Hague v. C. I. O., 307 U. S. 496 (1939) 14, 15, 16, 18

Hamilton v. Regents of Univ. of Cal., 293 U. S. 245 (1934) 15

Herndon v. Lowry, 301 U. S. 242 (1937) 17

Holmes v. City of Atlanta, 350 U. S. 879 (1955) 10

International Register Co. v. Recording Fare Register Co., 151 F. 199 (1907) 20

PAGE

Kunz v. N. Y., 340 U. S. 290 (1951) 11, 16

Lenroot v. Interstate Bakeries Corp., 55 F. Supp. 234 (D. C. Miss. 1944) 20

Lovell v. City of Griffin, 303 U. S. 444 (1938) 16

Mayor and City Council v. Dawson, 350 U. S. 877 (1955) 10

Maxwell v. Bugbee, 250 U. S. 525 (1919) 15

N. A. A. C. P. v. Alabama, 357 U. S. 449 (1958) 8

Near v. Minn., 283 U. S. 697 (1931) 15

Palko v. Conn., 302 U. S. 319 (1937) 9

Rockwell v. Morris, 10 N. Y. 2d 749, cert. den. 368 U. S. 913 (1962) 18

Saia v. People of N. Y., 334 U. S. 558 (1948) 16

Sellers v. Johnson, 163 F. 2d 877 (1947) 12

Schwimmer v. U. S., 279 U. S. 644 (1929) 14

Slaughter House Cases, 16 Wall. 36 (1873) 15

Stapleton v. Mitchell, 60 F. Supp. 51 (1945) 16

Staub v. City of Baxley, 355 U. S. 313 (1958) 9

Stromberg v. California, 283 U. S. 359 (1931) 10, 13

Terminiello v. Chicago, 337 U. S. 1 (1949) 10

Thomas v. Collins, 323 U. S. 516, 530 (1945) 13, 15

Thompson v. City of Louisville, 362 U. S. 199 (1960) 16

Truly v. Wanzer et al., 5 How. 141, 46 U. S. 140 (1847) 19

PAGE

Twining v. N. J., 211 U. S. 78 (1908) 15

U. S. v. Mayor and Selectman of McComb City, Civil Action No. 3215 (Miss. D. C. 1961) 1fn, 8, 17

United States v. Macintosh, 283 U. S. 605 (1931) 14

Winters v. People of N. Y., 333 U. S. 507 (1948) 16

Statute Cited

Interstate Commerce Act, Part II 49 U. S. C. 316(d) 17

Article Cited

109 U. of Pa. L. Rev. 67 (1961) 16

United States Court of Appeals

Fifth Circuit

No. 19724

◆

THE CONGRESS OF RACIAL EQUALITY, JOHN DOE and
MARY DOE,
Appellants,
versus
C. H. DOUGLAS, Individually and as Mayor of the CITY OF
McCOMB CITY, MISSISSIPPI, and MR. & MRS. AUBREY
McGEHEE,
Appellees.

◆

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

BRIEF FOR APPELLANTS

Statement

Appellants appeal from an order granting a preliminary injunction issued by the District Court for the Southern District of Mississippi, Jackson Division on the 22nd day of December, 1961. On December 2nd, 1961 the Court below had issued a temporary restraining order (R. 15-16).* A hearing on Appellees' application for a preliminary injunction was heard by Judge Harold Cox on December 7th, 1961. The opinion of the Court and the text of the injunction from which this appeal is taken are set forth at pages 237 through 246 of the record.

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* References are to pages of the transcript of record on file with this Court; the clerk's certificate certifying the said record appears at page 255.

Abstract of Facts

On Monday, November 27th, 1961, a preliminary injunction was issued by a statutory three-judge Court, sitting in the Southern District of Mississippi.[1] The order generally enjoined the Mayor and Selectmen of McComb City from interfering in any way with compliance by the Greyhound Corporation with the laws of the United States and the regulations of the Interstate Commerce Commission prohibiting racial discrimination in the facilities of interstate commerce (R. 23, 27, 36).

On Tuesday, November 28th, "White Only" signs were removed from the bus terminal (R. 93).

On the same day, the Chief of Police of McComb City learned from an agent of the Federal Bureau of Investigation that negro members of CORE would visit the city on the following day (R. 204-8). The next morning, when a group of five negroes arrived by bus at the depot a large crowd had already gathered (R. 71, 73, 77, 136).

The negroes found the bus terminal restaurant closed presumably because of a gas leak (R. 73). The group left but returned shortly after 3 P.M. (R. 207). They entered the terminal and went to the "white" lunch counter, sat and requested service from Aubrey McGehee, co-appellee and lessee of the restaurant facilities (R. 140). Mr. McGehee testified he had never served colored people before, nor had any "white" restaurant in McComb (R. 142, 148).

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[1] *U. S.* v. *Mayor & Selectmen of McComb City,* Civil Action No. 3215.

McGehee's testimony indicated that he informed the group that his restaurant was . . . "not connected with Greyhound", and that if they would go to the "colored part . . . a woman of your color will serve you anything you want over there" (R. 140-1). He also stated that one of the women in the group asked belligerently why they couldn't "get service here?" (R. 141, 144)

Almost immediately thereafter, in McGehee's words, "All hell broke out" (R. 115). The negroes were forcibly ejected from the terminal by members of the crowd (R. 85). On the following day, as a result of that incident, four residents of McComb were arrested for "disturbing the peace" (R. 86, 101).

On the same day, after receiving a telegram from the Justice Department (R. 218) requesting police protection at the terminal, the Selectmen of the city authorized the police to patrol the terminal on a regular basis (R. 103-4, 209).

On Friday a field representative of CORE met the 1:30 bus from New Orleans (R. 175) and picked up a group of five negro passengers (R. 178) without incident (R. 178-9). The negroes returned to New Orleans on the 3:30 bus (R. 185).

On Saturday, December 2d, the field representative of CORE met negro passengers, all natives of McComb (R. 182) who had arrived from Jackson, Mississippi. The negroes left the bus and used the terminal without incident (R. 187) but as they entered the auto of the CORE representative a crowd that had gathered beat the auto with fists and brass knuckles, kicked the sides and attempted to break the window of the car (R. 188). A police officer intervened and the beating stopped (R. 188).

On the same day a complaint by the City of McComb and Mr. and Mrs. Aubrey McGehee was filed against CORE and John and Mary Doe as defendants (R. 2). A temporary restraining order was signed by District Court Judge Mize (R. 16) and after a hearing before Judge Harold Cox, a preliminary injunction was issued on December 22nd, 1961 (R. 242) enjoining defendant CORE and its officers, agents, servants, employees and attorneys, from "sponsoring, encouraging or financing persons to use the terminal facilities located in the city of McComb City . . . for the purpose of fomenting violence or provoking breaches of the peace in or near said terminal facilities" (R. 245)

Statement of the Case

The issue in this case is the propriety of a federal court's use of its injunctive power to prevent people from freely and peacefully associating with one another to determine whether or not racial discrimination is practiced in interstate bus terminal facilities. The record of the District Court hearing is clear; the evidence failed completely to demonstrate that CORE's activities were either designed to foment violence or breaches of the peace or that appellants' conduct was the legal cause of what violence did occur. Therefore, for this reason and apart from the underlying constitutional questions, appellants take exception to the broad and unsupported findings of fact offered by the court below to justify the issuance of the injunction.

Essentially, however, appellants question the constitutionality of using injunctive process to restrain conduct which, except for the violence of third parties, would otherwise be permissible, if not laudable. Here, free speech and peaceful assembly have been suppressed upon a showing of sporadic violence or disorder by others than the free speech participants themselves.

Appellants urge that a court may not, from the fact of violence or disorder alone constitutionally conclude that otherwise peaceful conduct was designed for the purpose of fomenting the disorders.

Appellants therefore submit that the injunction issued by the District Court lacks support in the record, violates the Appellants' rights to freedom of speech, association and assembly, protected by the First Amendment, violates CORE's members privileges and immunities as United States citizens, constitutes an unconstitutional prior restraint, fails to meet constitutional standards of specificity, and finally that the injunction unwarrantedly damages the name and good reputation of CORE and its members.

Exceptions to the Findings of the District Court

The trial judge found that CORE sponsored, financed and encouraged John Doe and others to come into McComb in order to foment violence and provoke breaches of the peace (R. 239). In the words of the Court:

> "They came to McComb for the avowed purpose announced in advance, of testing the tempers of the community which upon their arrival they deliberately set about to provoke; and to incite disturbances and violence upon themselves as a part of their desired and intended goal." (R. 239)

The record shows clearly that defendants themselves at all times were peaceful (R. 74, 102, 200, 211, 212). The evidence was also clear that police could have maintained order (R. 130, 201, 202); that the principal violence which occurred on Wednesday in the restaurant facilities of the bus terminal was directly and proximately caused, not by any misconduct, but by a lawful request for service

(R. 142). Moreover, there was evidence that if police had been stationed in the terminal on Wednesday, violence could have been averted (R. 209, 210). Judge Cox's finding that CORE's "announced purpose" was to foment violence is based upon absolutely no evidence to that effect.

Hints of a conspiracy between CORE and the wire services which publicized Wednesday's trip were never given any substance (R. 66-71). In fact, the CORE representative testified that publicity about such trips does not further the aims and objects of CORE (R. 164).

On the other hand, the evidence did include the fact that Mr. Gordon, a Selectman and Chairman of the McComb City Police Committee wrote an inflammatory article in the McComb Enterprise Journal on the very day after Wednesday's clashes (Plaintiffs' Exhibit "2" p. 112).

If there was any design or purpose to provoke violence it was on the part of Appellee, the City of McComb, which instructed its policeman on Tuesday not to patrol the station (R. 63, 126), and which permitted groups of persons to gather on Wednesday in the vicinity of the bus station *prior* to the arrival of the negroes (R. 71, 73, 77, 136) even though it knew the crowd was predisposed to violence (R. 142).

In fact it required a telegram from the U. S. Attorney pointing out McComb City's obligations to provide protection (Defendants' Exhibit 1, p. 218), before the Selectmen reversed their earlier policy decision (R. 63, 126) and authorized the police to patrol the terminal (R. 103-4, 209).

The Court below also improperly found that "these missions of the defendant are not designed or intended in the public interest but are done for the sole purpose of distrubing the domestic tranquility of the community for its own financial gain" (R. 239). There was no proof whatever that CORE stood to gain financially by encouraging the so-called freedom rides. That the missions are "not designed or intended in the public interest" is a matter of opinion and obviously not an established fact. It can as easily be argued that if there were no "freedom rides" the Supreme Court decisions and the I. C. C. regulations requiring desegregation of interstate bus terminals would have been long deferred.

In the findings contained in the preamble to the injunction the Court stated that the members of the defendant "misled the police officials as to the timing of their plans on Wednesday so that they could arrive at said facilities while such local groups were present but in the tricked absence of such police officials who were in good faith, attempting to keep the peace" (R. 243).

That statement could only refer to a call from an F. B. I. agent saying that the negroes would arrive on Wednesday at the terminal at 3:25 when in fact they arrived there shortly after 3:00 (R. 207). This discrepancy of some twenty minutes or so is the sole evidence upon which the sweeping findings were made. There was no proof whatever of an undertaking or a relationship between CORE and the F. B. I. informant.

That the police were not misled should have been known to the court; testimony revealed that they had already determined not to have a patrol at the bus station (R. 63, 126). Testimony also made clear that if the police had been there, violence could have been averted (R. 210). It was not until the Department of Justice advised the Mayor that compliance with the three-judge court order required the city to protect persons using the terminals that police were finally stationed in the terminal (R. 127).

We, therefore, believe that the Court below erred in failing to grant appellants' motion to dismiss the complaint herein (R. 17). At the very least, the Court erred in not granting appellants' motion to stay the proceeding in the instant case, and in effect, to consolidate it with the proceeding then pending before the three-judge court in *U. S.* v. *Mayor & Selectmen of McComb City* (R. 21).

Having refused to grant Appellants' motions, the Court below further erred in granting the temporary injunction which is clearly to the law and against the weight of evidence.

I

The injunction violates appellants' rights to freedom of speech, association and assembly in contravention of Constitutional guarantees.

The right of CORE and its members to assist, encourage, associate and assemble with those attempting to integrate interstate bus terminals and facilities is a protected right under the First Amendment to the Constitution. As the Supreme Court stated in *De Jonge* v. *Oregon,* 299 U. S. 353 (1937):

> "The question is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects." (at p. 365)

CORE's activity, for the purpose of promoting peaceful integration is immune from state or federal proscription. The First Amendment, the due process, equal protection and the commerce clauses of the Constitution guarantee freedom in the pursuit of that goal. *Boynton* v. *Virginia,* 364 U. S. 450 (1960), *Burton* v. *Wilmington Parking Authority,* 365 U. S. 715.

As the Supreme Court stated in *N. A. A. C. P.* v. *Alabama,* 357 U. S. 449:

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly." (at p. 461)

It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the due process clause of the Fourteenth Amendment. See *Gitlow* v. *N. Y.,* 268 U. S. 652, 666; *Palko* v. *Conn.,* 302 U. S. 319, 324; *Staub* v. *City of Baxley,* 355 U. S. 313, 321. Nor can there be any different view because the activities include encouragement to act; free trade in ideas must encompass the opportunity to persuade to action, not merely to describe facts, *Abrams* v. *United States,* 250 U. S. 616; I *Annals of Congress,* 759-760.

Thus, to attempt to give an unlawful quality to Appellants' acts by describing them as "demonstrations" is an ineffectual and improper attempt to avoid the constitutional protections. Justice Harlan in a concurring opinion to *Garner* v. *State of Louisiana,* 82 S. Ct. 248 (Dec. 1961) where convictions for peaceful sit-ins were declared invalid:

> "There was more to the conduct of those petitioners than a bare desire to remain at the 'white' lunch counter and their refusal of a police request to move from the counter. We would surely have to be blind not to recognize that petitioners were sitting at those counters, where they knew they would not be served, in order to demonstrate that their race was being segregated in dining facilities in this part of the country. Such a demonstration, in the circumstances of these two cases, is as much a part of the 'free trade in idea' . . . as is verbal expression more commonly thought of as speech."

The resentment, hostility and antagonism of the local populace occasioned, it is alleged, by the visit of CORE and its members to McComb cannot serve as an excuse to stifle peaceful speech and conduct, for it is unconstitutional to ban or prohibit protected activity merely because it may invite dispute or bring about a condition of unrest. *Stromberg* v. *California,* 283 U. S. 359 (1931). As stated by the Supreme Court in *Terminiello* v. *Chicago,* 337 U. S. 1:

> "Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and pre-conceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky* v. *N. H.,* pp. 571-72, is never the less protected against censorship or punishment unless shown likely to produce a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance or unrest." (at p. 4)

The lack of clear and present danger of serious substantive evil is attested to by Appellees' witnesses who made it evident that the police could have controlled each and every disturbance (R. 201). Even without such testimony the court should properly have taken judicial notice of the power of the police to prevent disorder.

Nor can the injunction here be sustained by attempting to equate it with the case of *Feiner* v. *N. Y.,* 340 U. S. 315. There a divided court upheld the arrest of a speaker who had forced pedestrians to walk on the street by collecting a crowd on a public sidewalk, and who used sound amplifiers to indulge in name calling and verbal incitement to the use of arms. In the *Feiner* case, the New York Court of Appeals found that in addition to distrupting pedestrian and vehicle traffic on the sidewalk and street and refusing to accede to the requests of a police officer, Feiner's conduct threatened immediate danger to public safety and order. The *Feiner* facts are without parallel to the instant case where appellants were engaged in peaceful advocacy of what has been federally decreed as the law of the land. *Boynton* v. *Virginia, supra; Burton* v. *Wilmington Parking Authority, supra; Mayor & City Council* v. *Dawson,* 350 U. S. 877; *Holmes* v. *City of Atlanta,* 350 U. S. 879; *Gayle* v. *Browder,* 352 U. S. 903.

An injunction to prevent CORE and its members from pursuing their lawful activities because of past occasions of violence or disorder would run afoul of *Kunz* v. *N. Y.,* 340 U. S. 290 decided on the same day as the *Feiner* case. In *Kunz* it was held that an unpopular speaker cannot be denied the right to speak even though his past performances had excited third party interference and it was reasonably foreseeable that if a permit to speak were granted violence would ensue.

In *Kunz* the defendant made continued assertions of his intentions to deliver insulting addresses in derogation of other religious faiths. Notwithstanding his past conduct and announced intentions, the Supreme Court held that an ordinance which would forbid in advance his right to speak freely was unconstituional as a forbidden restraint on protected freedoms.

Whether the process be by ordinance, arrest or injunction, the fundamental rights to free association, speech, advocacy and assembly may not be abridged because third persons threaten to stage a riot, or because peace officials believe or are afraid that breaches of the peace will occur if the rights are exercised. In *Sellers* v. *Johnson,* 163 F. 2d 877 Jehovah's witnesses were prevented from staging a meeting because town officials feared mob violence. The Court of Appeals had this to say:

> "The theory that a group of individuals may be deprived of their constitutional rights of assembly, speech and worship if they have become so unpopular with or offensive to the people of a community that their presence in a public park to deliver a Bible lecture is likely to result in riot and bloodshed, is interesting but somewhat difficult to accept. Under such a doctrine unpopular political, racial and religious groups might find themselves virtually inarticulate. Certainly the fundamental rights to assemble, speak and to worship cannot be abridged merely because persons threaten to stage a riot or because peace officers believe or are afraid that breaches of the peace will occur if the rights are exercised." (at p. 881)

The English cases are in agreement. In the classic case of *Beatty* v. *Gillbanks,* 9 O. B. D. 308 (1882) the Salvation Army paraded peaceably and for a lawful purpose but with the knowledge that their assembly would be opposed, and with good reason to believe that a breach of the peace would be committed by those who opposed it. Yet it was held that the Salvation Army was not guilty of an unlawful assembly for to so hold would amount to saying that a man may be convicted for doing a lawful act if he knows that his doing it may cause another to do an unlawful act.

Appellees' moving papers in this proceeding asked the Court to restrain defendant CORE and its members from encouragement and support of persons using terminal facilities in the City of McComb "for the purpose of fomenting violence or provoking breaches of the peace."

Implicit in the bald, gratuitous and wholly unsupported assertion that CORE assists its members in "fomenting violence and provoking breaches of the peace" is the erroneous assumption that the exercise of protected freedoms can *ipso facto* be "the legal cause" of violence and disorder.

> "A speaker arousing third party hostility no more causes the breach of the peace than a man whose pocket is picked causes the theft by wearing a watch." Dicey, Law of the Constitution 273 (9th Ed. 1939) at 274.

By confusing free speech and association (which a state may not regulate) with violence (which may be regulated) appellees seek to bring the whole within official control. Pertinent here is Justice Jackson's concurring opinion in *Thomas* v. *Collins,* 323 U. S. 516 at 548-9, where he argues that speech of political malcontents is sought to be reached by associating it with some variety of sedition. *Cantwell* v. *Conn.,* 310 U. S. 302 makes the same point:

> "A state may not suppress free communication of views, religious or other, under the guise of conserving desirable conditions." (at p. 308)

The injunction here which restrains Appellants from the exercise of their rights to free speech and assembly cannot be sustained as an effort to prevent occasional and sporadic violence by others, a matter too suppositious and subjective for suppression, in any event. *Stromberg* v. *California,* 283 U. S. 359 (1931). Such a ruling, we urge, would be an encouragement to lawless elements to commit acts of violence and thereby prevent the peaceful exercise of rights granted by the Constitution.

II

The injunction violates the privileges and immunities of CORE's members.

"The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." Art. IV, Sect. 2.

An injunction forbidding CORE to assist, finance or encourage integration in the Southern areas or the City of McComb denies to CORE's members the right to freely associate one with another in common cause for political and social betterment. Such a denial contravenes the privilege of people of any race, religion or political faith to associate for the advancement of their interests. *Goshorn* v. *Bar Assn. of Dist. of Columbia,* 152 F. Supp. 300 *Schwimmer* v. *United States,* 279 U. S. 644; *United States* v. *Macintosh,* 283 U. S. 605.

In *Hague* v. *Committee for Industrial Organizations,* 307 U. S. 496, the question was presented whether freedom to disseminate information concerning the provisions of the National Labor Relations Act and to discuss the Act and the opportunities and advantages offered by it was a privilege or immunity of a citizen of the United States. Mr. Justice Butler, speaking for the Court held that it was:

> "Although it has been held that the Fourteenth Amendment created no rights in citizens of the United States, but merely secured existing rights against state abridgement, it is clear that the right peaceably to assemble and to discuss these topics and to communicate respecting them whether orally or in writing, is a privilege inherent in citizenship of the United States which the Amendment protects."

In *Hague* an injunction was sought to restrain several city ordinances which provided that permits to conduct public assemblies or parades could be denied to prevent "riots, disturbances or disorderly conduct", 307 US at 516. The Supreme Court held that such a standard of granting permits was sufficiently vague as to allow "the arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking will undoubtedly prevent such eventualities."

See also the *Slaughter House Cases,* 16 Wall 36; *Twining* v. *N. J.,* 211 US 78; *Duncan* v. *Missouri,* 152 US 377; *Maxwell* v. *Bugbee,* 250 US 525; *Hamilton* v. *Regents of Univ. of Cal.,* 293 US 245.

The fact that the Court below issued an injunction against CORE without a shred of evidence to show that its members designed or intended deliberately to cause violence or disorder demonstrates that CORE's members will be loathe and hesitant to organize and freely associate with one another in peaceful demonstration of common aims lest, if violence or disorder occur, they be held in contempt of Court. The outstanding injunction is, therefore, a real and substantial restraint upon their privileges and liberties as United States citizens.

III

The District Court injunction is an illegal prior restraint upon free expression.

The injunction below denies to CORE and its members, without proof of "clear and present danger", the rights of free speech, association and assembly. This kind of restraint was forbidden by the Supreme Court of the United States in *Thomas* v. *Collins,* 323 U. S. 516 where a Texas court had enjoined the defendant from soliciting union members without a permit. The defendant spoke to an assembly of union members and was convicted of contempt of court. The Supreme Court reasoned that the threat of a restraining order, backed by the power to cite for contempt hung over every word of defendant's speech and was, therefore, a prior restraint on rights to free speech. An injunction against CORE and its members is analagous to methods or devices condemned by the courts in other prior restraint cases. *Kunz* v. *People of State of N. Y.*, 340 U. S. 290; *Saia* v. *People of State of N. Y.*, 334 U. S. 558; *Lovell* v. *City of Griffen,* 303 U. S. 444; *Hague* v. *C. I. O.*, 307 U. S. 496; *Cantwell* v. *Conn.*, 310 U. S. 296. The very existence of the District Court injunction generates such an aura of fear as to itself constitute a prior restraint. *Stapleton* v. *Mitchell,* 60 F. Supp. 51 (1945).

In addition, the injunction, by branding CORE as a "fomenter of violence", makes its communications and associations the basis for restraint on its future activity. cf. *Near* v. *Minn.*, 283 U. S. 697.

IV

The injunction is unconstitutionally vague.

The District Court injunction forces CORE to risk the perils of contempt for "fomenting violence" if CORE should continue to assist those who are seeking peaceful integration in an atmosphere charged with local prejudice. The ambit of conduct which might be fairly charged as "fomentive of violence" is completely unspecified. CORE is left, therefore, inadequately warned and uncertain as to whether otherwise protected conduct, such as peaceful advocacy, is proscribed by the terms of the injunction. *Thompson* v. *City of Louisville,* 362 U. S. 199; *Chaplinsky* v. *New Hampshire,* 315 U. S. 568. Restrictions on free expression demand higher standards, *Winters* v. *People of State of N. Y.*, 333 U. S. 507; 109 U. of Pa. L. Rev. 67 (1960).

The injunction below is as vague as the unconstitutional statute in *Herndon* v. *Lowry,* 301 U. S. 242 where a defendant was convicted under a Georgia insurrection statute making unlawful "any attempt by persuasion or otherwise to induce others to join in any combined resistance to the lawful authority of the State." The United States Supreme Court reversed defendant's conviction, and said:

> ". . . If, by the exercise of prophecy, he can forecast that, as a result of a chain of causation, following his proposed action a group may arise at some future date which will resort to force, he is bound to make the prophecy and abstain, under pain of punishment, possibly of execution . . .
>
> ". . . The Law as thus construed, licences the jury to create its own standard in each case . . .
>
> ". . . No reasonable standard of guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment." (at p. 264)

V

The injunction was sought for the unlawful purpose of hindrance and delay in integrating McComb City bus terminal facilities.

On November 25, 1961 a statutory three-judge court sitting in the Southern District of Mississippi issued, at the request of the United States, a preliminary injunction enjoining segregation practices in the McComb bus terminals in violation of the recent order of the Interstate Commerce Commission (49 C. F. R.) requiring the end of racial segregation by all interstate carriers and at their terminals. *United States* v. *Mayor and Selectman of McComb City,* Civil Action #3215.

The failure of the City of McComb to implement this order by adequate police protection in the area of the bus station (R. 210) together with plaintiff McGehee's uncontradicted testimony that he would refuse to serve Negroes at the white lunch counter, together with the fact that McGehee has closed his restaurant (R. 146), demonstrate that the injunction sought by the City and McGehee as plaintiffs was for the purpose of foreclosing defendants from the exercise of their rights under the three-judge order and for the purpose of suppressing and preventing any test as to compliance with that order and with the regulations of the Interstate Commerce Commission.

The injunction itself, signed on December 22, 1961 enjoined CORE from sponsoring, encouraging or financing persons to utilize the terminals "for the purpose of testing the tempers and reactions of the local citizens of said city . . ."

There thus can be no doubt whatever of the purposes for which the injunction was sought. It was not sought to obviate unrest and disorder at the terminals but for the purpose of evading the Federal Court order and the order of the I. C. C.

If indeed the purpose was to avoid violence, it is well settled that this is impermissible in the circumstances since no court may suppress free communication of views, religious or otherwise, under the guise of conserving desirable conditions. *Cantwell* v. *Conn., supra.* Official suppression cannot be made a substitute for the duty to maintain order. *Hague* v. *C. I. O.,* 307 U. S. 496 at 516; *Rockwell* v. *Morris,* 10 N. Y. 2d 749, cert. den. 368 U. S. 913.

The language of the Court of Appeals in *Aaron* v. *Cooper,* 257 F. 2d 33 in denying a petition to postpone Court-approved integration is strictly and precisely apposite to the instant injunctive proceeding:

> "An impossible situation could well develop if the District Court's order were affirmed. Every school district in which integration is publicly opposed by overt acts would have 'justifiable excuse' to petition the Courts for delay and suspension in integration programs. An affirmation of 'temporary delay' in Little Rock would amount to an open invitation to elements in other districts to overtly act out public opposition through violent and unlawful means." (at p. 40)

In the *Cooper* case on appeal, the Supreme Court in *Cooper* v. *Aaron,* 358 U. S. 1 was equally emphatic:

> "It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is and important as is the preservation of public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution."

An injunction which is intended to stay the progress of integration in McComb constitutes an illegal method of delay in the enforcement of statutes and administrative orders of the Federal Government. *Bay Petroleum* v. *Corp. Commissioner of Kansas,* 36 F. Supp. 66 (D. C. Kan. 1940).

VI

The injunction against CORE, branding it as a "fomenter of violence", is false in fact and legally damaging to CORE's reputation and membership.

The Supreme Court of the United States in *Truly* v. *Wanzer et al.,* 5 How. 141, 46 U. S. 141, said with reference to the injunctive power:

> "There is no power, the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubt-

> ful case, than the issuing of an injunction. It is the strong arm of equity that never ought to be extended unless to cases of great injury, where courts of law cannot afford an adequate and commensurate remedy in damages." (at p. 142)

The injunction here, issued on a record absolutely barren of proof that CORE's conduct was unlawful or even not commendable, has labeled CORE as a "fomenter of violence" and a disturber of the peace.

The injunction thus is itself damaging to a national organization whose purposes are entirely peaceful and consistent with American ideals. The injunction should be vacated, for as was stated by the Court of Appeals, Second Circuit in *International Register Co.* v. *Recording Fare Register Co.,* 151 F. 199 (C. A. 2d):

> "The mere fact of the issuance of any sort of injunction stigmatizes the defendants as having done or threatened to do some illegal or inequitable act of such a nature as to justify such extraordinary relief, and, if cleverly advertised, may hurt the defendants in their business world." (at p. 202)

cf. *Lenroot* v. *Interstate Bakeries Corp.,* 55 F. Supp. 234 (D. C. Missouri 1944).

CONCLUSION

On November 27th, 1961 a United States Federal Court ordered an end to segregation practices in the interstate bus terminals in McComb. On December 2nd the complaint in this proceeding was filed in the District Court. In the interim, negro citizens and appellants in this action, attempted to use McComb facilities on an integrated basis. Their efforts were met with indifference by the City, and hostility and violence by local white groups. Some of the so-called "freedom riders" were colored citizens and residents of McComb. At all times they were peaceful.

The City of McComb then asked a Federal Court to enjoin the appellants and thereby suppress further investigation of the progress of intergration at the terminals. Appellants respectfully urge that no Court may prohibit citizens from peaceful advocacy or assembling lawfully, in pursuing their constitutional rights to use interstate bus terminals and facilities. Whether appellants' activity be labelled as "testing", a "freedom ride", or a "demonstration", appellants submit that, where as here, the activity is peaceful no court may enjoin their conduct.

We thus respectfully urge this Court to reverse the decision below and to vacate the injunction.

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United States Court of Appeals

Fifth Circuit

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No. 19,724.

The Congress of Racial Equality, Appellant

vs.

C. H. Douglas, Individually and as Mayor of the City of McComb City, Mississippi, and

Mr. & Mrs. Aubrey McGehee, Appellees

(Appeal from the United States District Court for the Southern District of Mississippi, Jackson Division)

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INDEX

Page

BRIEF OF APPELLEES 1

INTRODUCTION 1

STATEMENT OF THE CASE 1

A. Pleadings and Proceedings 1

B. Statement of Facts 3

C. Questions Involved 9

BRIEF OF THE ARGUMENT 9

POINT I: THE DISTRICT COURT WAS VESTED WITH JURISDICTION 9

A. The Court had Jurisdiction of this Cause Under Title 28, §1332 9

B. The Court had Jurisdiction of this Cause Under Title 28, §1343 10

POINT II: THE COURT PROPERLY ISSUED THE PRELIMINARY INJUNCTION 11

A. Injunctive Relief Was Appropriate 11

B. The Granting or Denial of a Preliminary Injunction is Addressed to the Sound Discretion of the Trial Judge 12

C. Appellant Has No Absolute Right Which Transcends the Court's Equity Powers to Misuse Travel Facilities in McComb 16

D. The Lower Court Was Not Obliged to Deny Relief to the City's Beleaguered Officials Because of the Overt Conduct of Some Local Citizens 23

REPLY TO BRIEF FOR APPELLANT 24

a. This is Not a Proper Matter for a Three-Judge Court Under Title 28 U.S.C.A., §2325 26

b. No Part of the Relief Here Sought Violates Any Act of Congress in the Regulation of Interstate Commerce 27

INDEX (Continued):

REPLY TO APPELLANT'S BRIEF (Continued): Page

c. The Granting of the Preliminary Injunction Does Not Conflict With the Order of the Interstate Commerce Commission in Docket MC 3358 28

d. There is No Conflict Between the Action Presented to This Court and Any Part of the Action Which is Now Pending Before the Three-Judge Court in Civil Action No. 3215 28

CERTIFICATE 32

TABLE OF CASES:

American Communications Ass'n. v. Douds, 339 U. S. 382, 94 L. Ed. 925, 70 S. Ct. 674 19, 21

Baldwin v. Morgan, 287 F. 2d 750 17
Barbier v. Connolly, 113 U.S. 27, 28 L. Ed. 923, 5 S.Ct. 357 22
Beacon Theatres, Inc. v. Westover, 359 U. S. 500, 506-7, 3 L. Ed. 2d 988, 79 S. Ct. 948 11
Beauharnais v. People, 343 U. S. 250, 96 L. Ed. 919, 72 S. Ct. 725 17, 20, 21, 23
Borden Co. v. McCrory, 169 F. Sup. 197 14
Brewer v. Hoxie School District, 238 F. 2d 91 11
Burlington Mills Corp. v. Roy Fabrics, 91 F. Sup. 39, aff. 182 F. 2d 1020 15

Central Hanover Bank & Trust Co. v. Calloway, 135 F. 2d 592 12
City of Miami Beach v. Benhow Realty, 168 F. 2d 378 14
City of Sumner, et al v. Spur Distributing Co., 110 F. 2d 649 14
Collins v. Hardyman, 341 U.S. 651, 95 L. Ed. 1253, 71 S.Ct. 937 23
Copra v. Suro, 236 F. 2d 107 12
Cox v. State of New Hampshire, 312 U. S. 569, 85 L. Ed. 1049, 61 S. Ct. 762 18, 21

Davidson Transfer & Storage Co. v. U.S., 164 F. Sup. 571, 574 27
Debs, In Re, 158 U.S. 564, 39 L. Ed. 1092, 15 S.Ct. 900 27
Dennis, et al v. United States, 341 U. S. 494, 95 L. Ed. 1137, 71 S. Ct. 857 20
Detroit Football Co. v. Robinson, 283 F. 2d 657 12
Douds v. Milk Drivers & Dairy Employees Union, 154 F.Sup. 222 14
Duckworth v. James, 267 F. 2d 224, cert. den., 361 U.S. 835 15

Feiner v. New York, 340 U.S. 315, 95 L.Ed. 267, 71 S.Ct. 303 20, 21, 24

Grosjean v. American Press Co., 297 U. S. 233, 80 L. Ed. 660, 56 S. Ct. 444 21
Group v. Finletter, 108 F. Sup. 327 15

INDEX (Continued):

TABLE OF CASES (Continued):

Page

Hague v. C. I. O., 307 U.S. 496, 83 L. Ed. 1423, 59 S.Ct. 954 21
Hunter v. Atchison, T. & S. F. Ry. Co., 188 F. 2d 294, cert. den., 342 U. S. 829 14

Kunz v. New York, 340 U.S. 268, 95 L. Ed. 267, 71 S.Ct. 325 20

Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310, 84 L. Ed. 774, 60 S. Ct. 517 13
Meredith v. Fair (5 Cir., #19,475), _____F. 2d _____ 17
Miami Beach Fed. Sav. & Loan Assn. v. Callender, 256 F. 2d 410 12
Milk Wagon Drivers' Union v. Meadowmoor Dairies, 312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552 22

Niemotko v. Maryland, 340 U.S. 268, 95 L. Ed. 267, 71 S. Ct. 325 20
Northwestern Natl. Life Ins. Co. v. Riggs, 203 U. S. 243, 51 L. Ed. 168, 27 S. Ct. 126 21

Phillips v. U. S., 312 U. S. 246, 85 L. Ed. 800, 61 S.Ct. 480 27

St. Paul Mercury Ind. Co. v. Red Cab Co., 303 U. S. 283, 82 L. Ed. 516, 58 S. Ct. 38 10
Schenck v. United States, 249 U.S. 47, 63 L. Ed. 470, 39 S. Ct. 247, 249 18
Shelly v. Kraemer, 334 U. S. 1, 92 L. Ed. 1161, 68 S. Ct. 836, 3 A. L. R. 2d 441 23
Simpson v. Southwestern R. Co., 231 F. 2d 59 27
Slack v. Atlantic White Tower System, Inc., 181 F. Sup. 124, aff. 284 F. 2d 746 23
Smotherman v. U. S., 186 F. 2d 676 15
Stainback v. Mo Hock Ke Lok Po, 336 U. S. 368, 93 L. Ed. 741, 69 S. Ct. 606 27

Thomas v. Collins, 323 U. S. 516 22

U. S. v. Interstate Com. Comn., 337 U. S. 426, 448, 93 L. Ed. 1451, 1463, 69 S. Ct. 1410 27
U. S. v. Mayor and Selectmen of McComb City, Civil Action No. 3,215 in District Court 2, 3
U. S. v. Morton Salt Co., 338 U. S. 632, 94 L. Ed. 401, 70 S. Ct. 357 21
U. S. v. Wood, et al, 295 F. 2d 772 11
Uphaus v. Wyman, 360 U.S. 72, 3 L. Ed. 2d 1090, 79 S.Ct. 1040 21

Walton v. City of Tupelo (Miss.), 133 So. 2d 531 11
Weiner, et al v. National Tinsel Mfg. Co., 123 F. 2d 96 12
Western Turf Assn. v. Greenberg, 204 U. S. 359, 51 L. Ed. 520, 27 S. Ct. 384 21
Whitney v. People of State of California, 274 U. S. 357, 71 L. Ed. 1095, 47 S. Ct. 641 18
Williams v. Hot Shops, Inc., 293 F. 2d 835 23
Williams v. Howard Johnson's Restaurant, 268 F. 2d 845 23

Yakus v. U.S., 321 U. S. 414, 88 L. Ed. 834, 64 S. Ct. 660 12

INDEX (Continued)

OTHER AUTHORITIES:

		Page
28 Am. Jur., 491, Injunctions, §3		11
28 Am. Jur., 499, Injunctions, §14		12
43 C. J. S. 406, Injunctions, §2		11
43 C. J. S. 676, Injunctions, §128		11
43 C. J. S. 420, Injunctions, §14		12
43 C. J. S. 464, Injunctions, §30(b)		14
43 C. J. S. 762, Injunctions, §§151-3		11
7 Moore's Fed. Practice,	1630, §64-04(2)	12
	1627,8	14
	1640, §65.04(3)	14
United States Code, §1332 and §1343 of Title 28		1
Title 28, U. S. C. A., §1343 (4)		10
Title 42, U. S. C. A., §1985 (2) & (3)		10
Title 28, U. S. C. A., §2325		2, 26
Title 28, U. S. C. A., §2284		2

BRIEF OF APPELLEES

INTRODUCTION

This appeal does not involve the question of racial segregation maintained or required by any state or municipal action. It centers on the narrow procedural issue of whether or not the District Court abused its discretion in granting a preliminary injunction after a hearing and briefs by both parties.

STATEMENT OF THE CASE

A.

Pleadings and Proceedings

Appellees, plaintiffs below, filed a sworn complaint on the 2nd day of December, 1961 (T. 2) alleging that the Appellant, Congress of Racial Equality, a corporation incorporated under the laws of the State of New York, was sponsoring, financing and encouraging persons to come to McComb City after publishing their intention so to do in order to foment violence and provoke breaches of the peace in and around the terminals and facilities used in McComb City for the transportation of passengers, mail and baggage into, through and from said city. Jurisdiction was alleged under Sections 1332 and 1343 of Title 28 of the U. S. Code.

On the same date, Appellees moved the Court for the issuance of a Temporary Restraining Order Without Notice (T. 8). This motion was supported by the affidavit of William A. Wiltshire (T. 11). The affiant, City Attorney and a resident citizen of said municipality, averred that persons named therein who had been identified in the press, radio and television media as members of the Congress of Racial Equality, had come to the Greyhound Bus Terminal at 206 Canal Street in McComb City and, after giving false information as to their plans, appeared at the bus station approximately one-half hour earlier than the police were led to believe they would. He further averred that while these persons were in the terminal they unnecessarily, rudely and violently beat upon the counter of the restaurant in the terminal and spoke and shouted in loud and boisterous language and that their actions provoked a breach of the peace therein. On information and belief, affiant stated that these actions were done with the knowledge and intent of creating disturbances and provoking violence and breaches of the peace.

A temporary restraining order enjoining the appellant and those in active concert or participation with it from continuing to sponsor, finance or encourage persons to utilize the terminal facilities for the purpose of fomenting violence and provoking breaches of the peace in or near said facilities, was issued at 4:00 o'clock p. m. on the same date by Chief Judge Sidney C. Mize (T. 15).

On the same date Appellees filed a Motion for Preliminary Injunction noticing the same for hearing on Thursday, December 7, 1961 (T. 7) at which time it came on to be heard.

At the commencement of the hearing on the Motion for Preliminary Injunction on December 7, 1961, Appellant filed (1) a Motion to Stay because of the pendency of the three-judge Federal Court action in United States v. Mayor and Selectmen of McComb City, Civil Action No. 3,215 in said District Court (T. 21); and (2) an application for the convening of a statutory three-judge court pursuant to Section 2284 and Section 2325 of Title 28, U. S. C. A. (T. 23).

During the court of the hearing, Appellees called five witnesses on direct examination and called Thomas Gaither, a salaried field representative of the Appellant, for cross examination as an adverse witness. The affidavit of William A. Wiltshire was also introduced under a ruling reserving to the Appellant the right to call Wiltshire, who was present in the courtroom, for cross-examination (T. 54). At the conclusion of Appellees' proof, Appellant offered no proof but filed two additional unsworn motions and rested (T. 215). One was a Motion to Dismiss the proceedings for failure to state a claim upon which relief could be granted (T. 17); the other was styled, "Motion to Dissolve Temporary Restraining Order and Statement in Opposition to Motion for Preliminary Injunction" (T. 25). Both these motions attacked the court's jurisdiction and alleged the injunction prayed for would abridge constitutional liberties and be a burden on interstate commerce.

B.

Statement of Facts

While Appellant's "Abstract of Facts" is not controverted as to the details set out, Appellees do believe that it is so incomplete as to be confusing. We feel the following statement will benefit the Court and will save much time in skipping about in the record, because the shortness of time did not permit the proof to be made in an orderly and sequential form.

McComb City, Mississippi has a population of approximately 14,500. In November, 1961 it employed a total of fifteen active police officials on all shifts (T. 59). On the 28th day of November a Preliminary Injunction was served on the City in Civil Action No. 3215, United States v. Mayor and Selectmen of McComb City (T. 59). On the same date, Jerome Smith, the "Chairman of the New Orleans CORE" (Congress of Racial Equality), telephoned the field representative of the

Appellant in Jackson, Mississippi and "dropped a hint" that he might travel to McComb by bus (T. 159). On Thuesday evening, November 28, 1961, Jack Quigley, Agent of the Federal Bureau of Investigation, called George Guy, the Chief of Police of McComb, Mississippi [a police officer of 25 years' experience (T. 209)], and told him that CORE was planning to send a group of people to the McComb bus terminal from New Orleans (T. 204, 5). The group arrived in accordance with Mr. Quigley's information (T. 205). Three hours before the arrival of Jerome Smith and other representatives of Appellant, news media had announced their anticipated arrival (T. 68) and during the early part of that morning a number of newspaper men not customarily present in McComb were on hand from as far away as Atlanta, Georgia (T. 69, 70). Prior to the time of the Smith group's arrival a gas leak developed in the cafe in the bus station and it had been cleared of people and closed to the public. A local plumber, Shevlon Cotten, had arrived in answer to the complaint (T. 73). There were also groups of people standing at some distance East and West of the bus station (T. 73). When Smith and the others with him debarked from the bus they found the station closed and departed without incident (T. 74). Officials of the McComb Police Department were present and had the crowd under control that morning (R. 76). The crowd was composed of members of both the white and negro races (T. 77). At about 2:00 p. m. on Wednesday, November 29, a disturbance occurred at the bus station involving a photographer (T. 75). During the progress of the investigation of that event, Agent Quigley again contacted Chief Guy (T. 206) and advised him that he had been in touch with the Jerome Smith group and that their intentions were to go to the bus station at 3:20 or 3:25 p. m. and catch the 3:30 p. m. bus out of McComb (T. 207). When Agent Quigley talked with Chief Guy, the Chief advised him that he planned to have his police force present at the bus station at the time the Smith group planned to return (T. 210, 214, 5). During the progress of the investigation of the incident involving the photographer (T. 84), Agent Quigley returned to the City Hall and advised Chief Guy that there had been a fight at the bus station and Chief Guy went there immediately. He found that the Smith group had come back about a half hour prior to their announced schedule (T. 207).

Immediately prior to the arrival of this group, Mr. McGehee, the operator of the restaurant in the Greyhound Terminal, was sitting outside of the restaurant talking to a man who identified himself to McGehee as a Television Cameraman from Station WDSU (T. 137). During the conversation, the Cameraman jumped up and ran to the corner where some colored people (the Smith group) were getting out of a car. As the group started to go in the East door, which was formerly the colored waiting room, the cameraman motioned them to the other door on the West side, which was formerly the white waiting room, and motioned the Smith group into that door (T. 138). McGehee followed them into the terminal building and they entered the section thereof which comprised the restaurant and took seats at a counter and began to beat and knock on the counter and demand service. One female in the group said loudly and fractiously (T. 144), "Why in the hell can't we get service in here?" McGehee thought violence would ensue (T. 142). He stated to them, "My wife and I own this restaurant. It is individually owned and not connected with Greyhound in any way." (T. 140). As the matter continued, McGehee asked them to go to the part of the restaurant that was formerly the colored part where they would be served (T. 141). At this point other persons in the restaurant attacked the Smith group (T. 142).

For months prior to this incident members of the colored race had used the part of the terminal facilities formerly designated as white facilities without violence (T. 143, 4). When the police arrived, with the help of a loud speaker system, they brought the mixed crowd at the bus station under control. The crowd obeyed the orders of the police reluctantly but without fisticuffs or scuffling (T. 77). The Chief of Police and the Police Commissioner of the City attempted to locate the Smith group in order to secure identification of the persons involved in the disturbance but they could not be found at that time (T. 85). They were later located at about 6:00 o'clock p. m. of that day and were contacted by the police but did not care to prefer charges. The police continued to investigate the disturbance and subsequently arrested four men at about noon the next day (T. 86).

Upon the outbreak of this trouble, the regular Police Department of McComb City was supplemented by additional officers, and off-duty men to the police force were used for extra duty almost double time (T. 132, 3). On Wednesday afternoon or Thursday morning (T. 126), Mayor Douglas talked with Assistant Attorney General Burke Marshall (T. 128) and told him that the City had decided it might be a violation of the injunction issued against them to place an officer inside of the station. Marshall nevertheless encouraged him to take this action (T. 129). In the course of their conversation, the Mayor said to Marshall, "If we can have these publicized movements discouraged and discontinued, it will be a lot of help to us in maintaining and keeping peace and order." "If Washington will use their influence, or what influence they have, to discourage that, it will be halpful." In reply to which Assistant Attorney General Marshall stated, "I'll do that today and call you back." In a return call Assistant Attorney General Marshall advised that he had

had a telephone conversation with CORE's headquarters and that they had promised to discontinue these publicized movements (T. 131, 2). Thomas Gaither, the field representative for CORE, had discussed Attorney General Marhsall with Jerome Smith during their Tuesday morning telephone conversation and had given Smith the telephone number of Marshall in Washington, D. C. (T. 172). On Thursday, November 30, Assistant Attorney General Marshall wired the Mayor that his interpretation of the Court Injunction did not prohibit the McComb Police from patrolling the bus station premises, provided their presence did not "have the purpose or effect of coercing racial segregation." (Defendant's Exhibit #1) (T. 218). Immediately upon receipt of this telegram the City placed policemen inside the terminal (T. 129). Correct compliance with the injunctive order was a matter of serious concern to the governing officials of McComb (T. 104, 123).

During the day on Thursday, the Associated Press Wire Service carried stories to McComb that the Smith group, upon their return to New Orleans, engaged in meetings there and several of them were quoted in interviews in which they stated that while they had no immediate plans, they did plan to return to McComb (T. 79). The press also carried stories on Thursday that there would be additional trips from New Orleans and from Baton Rouge to McComb on Friday (T. 79). At approximately 11:00 a. m. Thursday morning, Gordon Carey, the National Field Director for Appellant in New York called Gaither, the Field Director in Jackson, and instructed him to go to the Greyhound Station in McComb on Friday to meet expected bus passengers (T. 172, 3). Upon his arrival in McComb, Gaither called Doris Castle, a member of "our New Orleans CORE Group" to get the details of the time of arrival of the passengers he was supposed to meet (T. 175).

On Friday, Gaither went to the bus station at 1:30 p. m. and at his request the Assistant Chief of Police of the McComb Police Force reserved a place convenient to the station for Gaither to park. Chief Guy offered him an escort. Although Gaither testified that he had some fears or apprehensions for his safety, he stated that they were not due to anything on the part of the police - that his fear came from the presence of the crowds near the station (T. 179). When the group arrived from New Orleans they "used the facilities at the McComb bus station", then went to a restaurant to get something to eat, got back on the bus and left without incident. (T. 185, 186). On Saturday Gaither again went to the bus terminal to pick up bus passengers. The evidence is conflicting as to whether any disturbance occurred in the terminal building (T. 190, 195 - 197). The evidence is also conflicting as to the extent of a disturbance at Gaither's car. He states there were several blows struck against the car for a matter of a minute until a police officer heard the impact and came to the car and stopped the disturbance (T. 190). Officer Eddie Smith stated that only one blow was struck against the car and that he immediately went to the scene and told the person to move on.

When the Temporary Restraining Order was issued the situation was tremendously improved (T. 95, 122), although members of the colored race have continued to use the terminal facilities (T. 95). The McComb Police Force never had any difficulty in keeping peace and good order in McComb in the past (T. 213). During the period from Tuesday, the 28th day of November, 1961, until the issuance of the Temporary Restraining Order, in the words of the witness, Gordon, a newspaperman, and the Police Commissioner: "The people of the City were obviously greatly disturbed. They were reluctant to go about their ordinary business. The situation was extremely tense, explosive." Business in general in the community was seriously affected (T. 122) and Mr. & Mrs. McGehee were forced to abandon and close their private restaurant business (T. 146). There had been other racial disturbances between members of the white and colored races with regard to schooling in McComb prior to the time of the CORE sponsored bus station incidents, but CORE had no part whatever in those situations, (T. 169).

C.

Questions Involved.

The District Court, after the conclusion of the hearing and the consideration of arguments and briefs submitted by counsel for both parties, overruled the motions filed by Appellant (T. 232-236). The Appellant chose to perfect this appeal rather than proceed to a hearing on the merits. The limited question for decision here is whether or not the District Judge abused his discretion in granting such injunction.

BRIEF OF THE ARGUMENT

POINT I.

THE DISTRICT COURT WAS VESTED WITH JURISDICTION

A.

The Court Had Jurisdiction of This Cause Under Title 28, Section 1332.

There is a diversity of citizenship between plaintiffs, who are all citizens of the State of Mississippi, and the Defendant CORE, which is a corporation incorporated under the laws of the State of New York. All of the proof by way of verified pleadings, affidavit and oral proof indicates that the John Doe defendants who were never served with process were citizens of states other than Mississippi.

The Complaint alleges wilful, intentional, deliberate action on the part of the defendants. These allegations would certainly support a claim by plaintiffs for punitive as well as actual damages under their prayer for general relief. In this status of the pleadings, a good faith claim was presented which met the jurisdictional amount requirement.

St. Paul Mercury Indemnity Co. v. Red Cab Co., 303 U. S. 283, 82 L. Ed. 516, 58 S. Ct. 38.

B.

The Court Had Jurisdiction of This Cause Under Title 28, § 1343.

Title 42, U. S. C. A., § 1985 (2) & (3) is violated whenever two or more persons conspire for the purpose of depriving any person directly or indirectly of the equal protection of the law or of equal privileges and immunities under law, and whenever they so conspire to prevent or hinder the duly constituted authorities of a State from giving or securing such equal protection of the laws to all persons under their jurisdiction. Certainly the proof in this record amply supports the Court's finding that the action of the Appellant here was a fundamental part of its plan to foment violence and breaches of the peace in McComb to attract attention to itself. This necessarily hindered the rule of law in McComb to the detriment of its populace.

District courts have original jurisdiction of any action authorized under §1985 of Title 42, to recover damages or to secure equitable or other relief.

Title 28, U. S. C. A., §1343 (4).

The utilization of the Writ of Injunction to protect rights encompassed within Title 42, §1985 (2) & (3) has been approved.

Brewer v. Hoxie School District (C. A. 8th, 1956), 238 F. 2d 91.

POINT II.

THE COURT PROPERLY ISSUED THE PRELIMINARY INJUNCTION

A.

Injunctive Relief Was Appropriate

Preliminary injunctive relief is available from a Court of Equity to maintain the status quo by restraining an act contrary to equity and good conscience, especially when it is demonstrated that the plaintiff will be irreparably injured in the absence of such relief and has no adequate remedy at law.

43 C. J. S. 406, Injunctions, §2

28 Am. Jur. 491, Injunctions, §3

Beacon Theatres, Inc. v. Westover, 359 U. S. 500, 506-7, 3 L. Ed. 2d 988, 79 S. Ct. 948.

Injunctive relief is proper to prevent the improper or illegal use of public places and the fact that the act sought to be enjoined is a crime does not prevent injunction.

43 C. J. S. 762-65, Injunctions, §§151-3

43 C. J. S. 676, Injunctions, §128

Walton v. City of Tupelo (Miss.), 133 So. 2d 531.

cf. U. S. v. Wood, et al., 295 F. 2d 772, where a presumptively valid state criminal prosecution was enjoined because of possible adverse effect on members of the community.

B.

The Granting or Denial of A Preliminary Injunction is Addressed to the Sound Discretion of the Trial Judge.

A preliminary injunction is to be awarded or withheld in the sound discretion of the Trial Court.

> Yakus v. U. S., 321 U. S. 414, 88 L. Ed. 834, 64 S. Ct. 660
>
> Central Hanover Bank & Trust Co. v. Calloway, 135 F. 2d 592
>
> Detroit Football Co. v. Robinson, 283 F. 2d 657
>
> Copra v. Suro, 236 F. 2d 107
>
> 7 Moore's Fed. Practice 1630, §64-04(2)
>
> 43 C. J. S. 420, Injunctions, §14

The purpose of a preliminary injunction is not to decide or prejudge the merits but to preserve the status quo until the rights of the parties may be fully determined by trial.

> Miami Beach Fed. Savings & Loan Assn. v. Callender, 256 F. 2d 410
>
> 28 Am. Jur. 499, Injunctions, §12

In Weiner, et al v. National Tinsel Manufacturing Co., 123 F. 2d 96, the 7th Circuit, in considering an appeal from an order awarding a preliminary injunction, stated:

> "Defendant argues its case here as though the appeal was from an order finally adjudicating the controversy on its merits. Such is not the case. The court properly, by its findings and conclusions, left open for further consideration and future determination, the merits of the controversy. We intend to do likewise. In fact, an appeal from an order of the nature here involved presents only the narrow question as to whether the District Court abused its discretion in allowing plaintiffs' motion for a preliminary injunction.

> Selchow & Righter Co. v. Western Printing & L. Co., 7 Cir., 112 F. 2d 430; Independent Cheese Co. v. Kraft Phenix Cheese Corp., 7 Cir., 56 F. 2d 575. In the latter case, this court, 56 F. 2d on page 575, said:
>
> "* * * It is the exercise of judicial discretion by the District Court which is the subject of review. If its discretion was not abused, or stating it differently, if its discretion was not improvidently exercised, its injunctional order will not be reversed upon appeal. Alabama v. United States, 279 U. S. 229, 230, 49 S. Ct. 266, 73 L. Ed. 675."

The trial court could not make any final determinations as to the merits of the controversy before it in ruling on a motion for a preliminary injunction. The hearing was held only five days after a part of the incidents involved took place. There was no time for depositions or discovery procedures by either party and Appellant put on no evidence whatever. The Court stated that its findings of fact were based on preliminary hearing proof (T. 238) and were found to be the facts "on this hearing" (T. 239). The Supreme Court of the United States in Mayo v. Lakeland Highlands Canning Co., 309 U. S. 310, 84 L. Ed. 774, 60 S. Ct. 517, had before it an appeal from the lower court's ruling on a motion for preliminary injunction wherein, at the request of both parties, the lower court had proceeded to consider and rule upon the constitutionality of the act in question, ruling it unconstitutional and finding that the defendants had not proceeded in accordance with the requirements of the act. The Court, speaking through Mr. Justice Roberts, stated:

> "We think the court committed serious error in thus dealing with the case upon motion for temporary injunction. The question before it was not whether the act was constitutional or unconstitutional; was not whether the Commission had complied with the requirements of the act, if valid, but was whether the showing made raised serious questions under the Federal Constitution and the state law, and disclosed that enforcement of the

> act, pending final hearing would inflict irreparable damages upon complainants."

To the same effect is the ruling of the 4th Circuit in City of Sumner, et al v. Spur Distributing Co., 110 F. 2d 649:

> "It is well settled that the important questions involved in the case should not be decided upon appeal from the granting of the interlocutory injunction; * * *."

Where the questions presented are grave and the balance of injury and equities favor the granting of a preliminary injunction, the Court should exercise its discretion to grant the same.

City of Miami Beach v. Benhow Realty,
168 F. 2d 378.

The granting or denial of a temporary injunction is of no binding effect on the court in making a later determination of facts after a full hearing on the merits.

Hunter v. Atchison, Topeka & Santa Fe Railway Co.,
188 F. 2d 294, cert. den., 342 U.S. 829.

The public interest carries a great weight in the balance scale which the Court is required to use in determining whether to grant or withhold preliminary injunctive relief.

7 Moore's Federal Practice 1627, 8

Where grave questions are presented and injury to complaining party would be certain and irreparable, if motion was denied and final decree would be found in their favor, while the injunction if it be granted would not cause any considerable injury to the opposing parties, the injunction ought to be granted.

Borden Co. v. McCrory, 169 F. Sup. 197

Douds v. Milk Drivers and Dairy Employees
Union, 154 F. Sup. 222.

43 C. J. S. 464, Injunctions, §30(b)

Certainly the Appellant is in a difficult position to complain of the issuance of an injunction so limited in scope as the one here issued. If it does not intend to use the terminal facilities to provoke violence and call attention publicly to itself, the injunction is completely innocuous. If, on the other hand, its intentions are to make use of the facilities for any prohibited purpose, it can ill afford to say so. Certainly this Court should not be asked to presume that if any question of contempt of court through abuse of the injunction were to be raised, it would be improperly determined and that such improper determination would not be corrected on appeal. If through circumstance or misadventure Appellant's actions only happened to coincide with the occurrence of violence, then it must be presumed that the courts would certainly so determine.

The proof is not required to be complete enough to demonstrate the right to a decree after trial to justify preliminary injunctive relief.

> Burlington Mills Corp. v. Roy Fabrics, 91 F. Sup. 39, aff. 182 F. 2d 1020.
>
> Duckworth v. James, 267 F. 2d 224, cert. den., 361 U. S. 835.

In this cause the verified complaint was admitted without objection by defendants. The affidavit of William A. Wiltshire was admitted subject to defendants' objections, but with the understanding that Mr. Wiltshire was in the courtroom and subject to cross-examination on any phase of his affidavit, which cross-examination was waived by defendants.

Defendants put on no proof and offered no counter-affidavits.

Such verified complaint and affidavit may be presumed true unless controverted.

> Smotherman v. U. S., 186 F. 2d 676.
>
> Group v. Finletter, 108 F. Sup. 327.
>
> 7 Moore's Federal Practice 1640, §65.04(3).

Such an affidavit does not need to meet the same requirements as affidavits on Motion for Summary Judgment. Since preliminary injunction hearings do not result in any final adjudication of rights, affidavits in such proceedings need only demonstrate "a fairly reliable factual basis" for granting the injunctive relief requested. Id., p. 1641.

C.

Appellant Has No Absolute Right Which Transcends the Court's Equity Powers to Misuse Travel Facilities in McComb.

Appellant is in nowise enjoined by the preliminary injunction from aiding travel in interstate or intrastate commerce or from speaking in favor of racial integration in travel facilities or elsewhere in the City of McComb or from combining these activities. The injunction temporarily restrains only such travel as is designed to and does provoke violence and breaches of the peace.

This appeal does not involve the integration or segregation of the white and negro race. The District Court expressly so ruled (T. 238). It is true that racial integration was the aegis under which Appellant procured others to travel to McComb, but this "project" obviously contemplated more than a peaceful non-provocative demonstration for such would not be of sufficient publicity value or status or recover the initiative lost to another group which had conducted demonstrations in the schools of the same city earlier. That extra something, more dramatic and noteworthy, which this particular project had, was the injection of provocations of violence into an "extremely tense, explosive" situation.

Despite appellant's verbal protestations to the contrary, the beating on the counter and the loud cursing of the "project" group assembled inside the station in the tricked absence of local police but in the presence of several local citizens obviously not in sympathy with their presence or ostensible purpose, was the catalyst needed to provoke incidents of violence that reaped such rich rewards of publicity for Appellant from the cooperating news media.

We submit that it is an important requirement in cases such as this that the court consider the historical background against which these events were super-imposed. Beauharnais v. People, 343 U. S. 250, 96 L. Ed. 919, 72 S. Ct. 725. McComb City, Mississippi is a relatively small southern community which, during the entire lifetime of its present residents, has followed the custom and practice of racial segregation. Earlier in the year racial demonstrations involving schools in the community had taken place heightening a tense situation. One day prior to the first of Appellant's actions the police force and officials of the city were enjoined to refrain from any law enforcement activities which might be construed as "seeking to enforce or coerce the segregation of the white and negro races in their use of terminal facilities used in interstate commerce." (In this connection the city had determined that placing uniformed policemen with badges and guns inside of the terminal facilities would constitute action which would be a violation of that injunction. cf. Baldwin v. Morgan, 287 F. 2d 750 and Meredith v. Fair (5th Cir., #19475) ____F. 2d ___). News media began to exploit the local situation to the fullest.

At this time and under these circumstances we submit that the provocative demonstrations sponsored by Appellant were so far outside of the area of constitutionally protected free speech as to merit no consideration whatever by the trial judge in determination whether or not to grant the preliminary injunction.

Constitutional guarantees of free speech and assembly are fundamental but not absolute rights. The following excerpts from decisions of the Supreme Court of the United States are but illustrative of many other similar holdings:

Schenck v. United States, 249 U. S. 47, 63 L. Ed. 470, 39 S. Ct. 247, 249:

> "We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights. But the character of every act depends upon the circumstances in which it is done. Aikens v. Wisconsin, 195 U. S. 194, 205, 206, 25 Sup. Ct. 3, 49 L. Ed. 154. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. Gompers v. Buck's Stove & Range Co., 221 U. S. 418, 439, 31 Sup. Ct. 492, 55 L. Ed. 797, 34 L.R.A. (N.S.) 874. The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

Whitney v. People of State of California, 274 U. S. 357, 71 L. Ed. 1095, 47 S. Ct. 641:

> "That the freedom of speech which is secured by the Constitution does not confer an absolute right to speak, without responsibility, whatever one may choose, or an unrestricted and unbridled license giving immunity for every possible use of language and preventing the punishment of those who abuse this freedom; and that a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to incite to crime, disturb the public peace, or endanger the foundations of organized government and threaten its overthrow by unlawful means, is not open to question. Gitlow v. New York, 268 U. S. 652, 666, 668, 45 S. Ct. 625, 69 L. Ed. 1138, and cases cited."

Cox v. State of New Hampshire, 312 U. S. 569, 85 L. Ed. 1049, 61 S. Ct. 762:

> "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be

lost in the excesses of unrestrained abuses."

American Communications Ass'n. v. Douds, 339 U. S. 382, 94 L. Ed. 925, 70 S. Ct. 674:

> "Although the First Amendment provides that Congress shall make no law abridging the freedom of speech, press or assembly, it has long been established that those freedoms themselves are dependent upon the power of constitutional government to survive. If it is to survive it must have power to protect itself against unlawful conduct and, under some circumstances, against incitements to commit unlawful acts. Freedom of speech thus does not comprehend the right to speak on any subject at any time.
>
> "* * * We have never held that such freedoms are absolute. The reason is plain. As Chief Justice Hughes put it, 'Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.' Cox v. New Hampshire, supra, 312 U. S. at page 574, 61 S. Ct. at page 765, 85 L. Ed. 1049, 133 A. L. R. 1396.
>
> "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented. The high place in which the right to speak, think, and assemble as you will was held by the Framers of the Bill of Rights and is held today by those who value liberty both as a means and an end indicates the solicitude with which we must view any assertion of personal freedoms.
>
> "On the other hand, legitimate attempts to protect the public, not from the remote possible effects of noxious ideologies, but from present excesses of direct, active conduct are not presumptively bad because they interfere with an, in some of its manifestations, restrain the exercise of First Amendment rights.
>
> "* * * We must, therefore, undertake the 'delicate and difficult task * * * to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.' Schneider v. State, 1939, 308 U. S. 147, 161, 60 S. Ct. 146, 151, 84 L. Ed. 155."

Dennis, et al v. United States, 341 U. S. 494, 95 L. Ed. 1137, 71 S. Ct. 857:

> "Nothing is more certain in modern society than the principle that there are no absolutes, that a name, a phrase, a standard has meaning only when associated with the considerations which gave birth to the nomenclature.
>
> "If the ingredients of the reaction are present, we cannot bind the Government to wait until the catalyst is added."

The importance of the court's consideration of the factual circumstances under which utterances, claimed to be exercises of free speech, occur is graphically illustrated by Mr. Justice Frankfurter's concurring opinions in three First Amendment cases decided by the Supreme Court on the same date, in which differing results were reached. They are:

Niemotko v. Maryland; Kunz v. New York; and Feiner v. New York,

His concurring opinion is published in 340 U. S. 268, 95 L. Ed. 267, 71 S. Ct. 325.

Although Mr. Justice Jackson differed in the result of the application of what he considered the proper test, his dissent in Beauharnais v. People, supra, reemphasized the necessity for such background considerations in the following language:

> "One of the merits of the clear and present danger test is that the triers of fact would take into account the realities of race relations and any smouldering fires to be fanned into holocausts. Such consideration might well warrant a conviction here when it would not in another and different environment."

We submit that against the background and setting here disclosed the Appellant's attempt to avoid the operation of a proper Preliminary Injunction with a high sounding appeal for Constitutional rights should fall on deaf ears.

The only party bringing this appeal is the Congress of Racial Equality (T. 246), a New York corporation (T. 2). A corporation has no standing to claim the deprivation of the liberty of freedom of speech and assembly, for the courts have clearly ruled that these liberties guaranteed by the First Amendment are the liberties of natural, not artificial, persons.

> Northwestern National Life Insurance Co. v. Riggs, 203 U. S. 243, 51 L. Ed. 168, 27 S. Ct. 126.
>
> Western Turf Association v. Greenberg, 204 U. S. 359, 51 L. Ed. 520, 27 S. Ct. 384.
>
> Grosjean v. American Press Co., 297 U. S. 233, 80 L. Ed. 660, 56 S. Ct. 444.
>
> Hague v. C. I. O., 307 U. S. 496, 83 L. Ed. 1423, 59 S. Ct. 954.
>
> cf. U. S. v. Morton Salt Company, 338 U. S. 632, 94 L. Ed. 401, 70 S. Ct. 357.

Not only do we submit that the Preliminary Injunction as issued was proper but, in fact, the City of McComb has such a substantial interest in the circumscription of activities of the type enjoined, under the circumstances existing at the time of the issuance of this preliminary injunction, as would readily support an even stronger injunction. Much more rigid and restrictive statutory language has withstood court tests in less demanding immediate public interest situations.

> American Communications Association v. Douds, supra.
>
> Cox v. New Hampshire, supra.
>
> Beauharnais v. People, supra.
>
> Feiner v. New York, 340 U. S. 315, 95 L. Ed. 267, 71 S. Ct. 303.
>
> Uphaus v. Wyman, 360 U. S. 72, 3 L. Ed. 2d 1090, 79 S. Ct. 1040.
>
> cf. Dennis v. U. S., 341 U. S. 494, 95 L. Ed. 1137, 71 S. Ct. 857.

This case is an unusual one. All of the Supreme Court decisions which our research has disclosed involving claimed unconstitutional restraints on freedom of speech and assembly arose from the application of rigid statutes. (Thomas v. Collins, 323 U. S. 516, is cited by Appellant as an injunction case, but a review of the opinion discloses that the restraining order in question was issued prior to Appellant's speech without a hearing pursuant to a statutory requirement. The Court expressly confined its decision there "to the narrow question whether the application made of Section 5 in this case contravenes the First Amendment." p. 532) However, in this instance a Federal Chancellor, after notice and a hearing, formulated an injunction decree to fit this precise factual situation. The Supreme Court has pointed out what common sense already dictates that neither the first nor the fourteenth amendments prevent the substitution of a Chancellor's Decree for a policeman's club.

Milk Wagon Drivers' Union v. Meadowmoor Dairies,
312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552.

Constitutional guarantees are not paramount to reasonable exercises of police power necessary to promote peace and good order. Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923, 5 S. Ct. 357.

No element of prior restraint such as is necessarily present in statutory restrictions is involved here. The Appellant had had its say not once but several times before the court acted. It had held its assemblies and actual breaches of the peace had occurred. The likelihood of a continuance of such activities was present.

No constitutional prohibition exists which controls the court's discretion to the extent of requiring it to refrain from granting an injunction as here in question.

D.

The Lower Court Was Not Obliged to Deny Relief to the City's Beleaguered Officials Because of the Overt Conduct of Some Local Citizens.

The grant of injunctive relief to Appellees was not an abuse of judicial discretion because acts of violence arose from the actions of persons other than the Appellant. The person who shouts "Fire" in a crowded theater cannot justify his act as constitutional by pointing out that others started the stampede.

There certainly was no lack of right in the individual citizens of McComb to be incensed or aroused by Appellant's agitation even though their overt acts cannot be justified. Time and again the courts have held that rights guaranteed under the 14th Amendment are not violated by merely private conduct of individual citizens who are not acting under any positive provision of State law.

> Shelly v. Kraemer, 334 U. S. 1, 92 L. Ed. 1161, 68 S. Ct. 836, 3 A. L. R. 2d 441
>
> Collins v. Hardyman, 341 U. S. 651, 95 L. Ed. 1253, 71 S. Ct. 937
>
> Williams v. Howard Johnson's Restaurant, 268 F. 2d 845
>
> Slack v. Atlantic White Tower System, Inc., 181 F. Sup. 124, aff. 284 F. 2d 746.
>
> Williams v. Hot Shops, Inc., 293 F. 2d 835.

The overzealousness of some actors in an excessively tense situation such as this may reasonably be expected. Indeed, such individual reaction on the part of the local citizenry obviously was depended upon by Appellant to make its "project" complete. In any event it cannot form the basis for a denial of Appellees' right to injunctive relief from the instigation of such "projects" for the public good. While the breaches of the peace were physically the fault of local citizens, who were arrested, such arrests were not the only recourse of the Appellees. As Mr. Justice Frankfurter observed in his concurring opinions in Feiner v. New York, etc., supra:

> "It is not a constitutional principle that, in acting to preserve order, the police must proceed against the crowd, whatever its size and temper, and not against the speaker."

REPLY TO BRIEF FOR APPELLANT

The fundamental inaccuracy which pervades the entirety of Appellant's brief is the erroneous and immature conception that only its objectives are "laudable" and "consistent with American ideals" and, therefore, it has an absolute constitutionally guaranteed liberty to take whatever action it pleases whenever and wherever it chooses. The liberties it claims have never been construed to so broadly exist. If they were to be, then they must needs circumscribe the liberties of all who wish to disagree with them and of others who do not choose to debate the issue on either side.

This line of argument by Appellant also assumes that a corporation can lay claim to these personal liberties, which assumption the courts have clearly and expressly denied. Still and nevertheless, it is basically wrong because all forms of liberty in an organized society are necessarily circumscribed. One's right to speak is limited in many places and at many times by the right of others to quiet; one's right to drive a car is limited by the rules of the road; one's right to worship or pray is limited by the right of others to worship or pray differently or not at all; one's right to assemble or parade is limited by the need for orderly use of streets and public places to secure maximum public benefit, and one's right to demonstrate in support of his beliefs or ideas is circumscribed by the necessity of preservation of peace and order.

Excessive exercise of any of the liberties we enjoy can result in such abuses that the freedoms of others, which must be construed to exist in equal breadth and fundamentality with those asserted by the actors, are nullified.

Appellant's "Exceptions to the Findings of the District Court" are not framed in compliance with the rules of this Court, and it is difficult to tell where they stop fussing and make a specific exception upon which they expect this Court to rule. Complaint is voiced as to (1) a finding by the court that "CORE's 'announced purpose' was to foment violence" and (2) the finding that "these missions of the defendant (Appellant) are not designed or intended in the public interest but are done for the sole purpose of disturbing the domestic tranquility of the community for its own financial gain." Error is clearly assigned as to (3) the court's action in overruling the motions to dismiss, to stay and to consolidate. Error is also assigned as to (4) the granting of the "Temporary" (sic) Injunction.

These specifications will be discussed seriatim.

1. There is no preliminary finding of fact in the injunction order in anywise related to Appellant's statement, but the following sentence does appear in the course of the court's opinion:

> "They came to McComb for the avowed purpose announced in advance of testing the tempers of the community which upon arrival they deliberately set about to provoke; and to incite disturbances and violence upon themselves as a part of their desired and intended goal."

A quick reference to the statement of facts set out in Appellees' brief above will show that such finding is amply supported by the facts in the record and the reasonable and logical inferences to be drawn therefrom (e. g. advance publicity of a fact in their sole possession, namely, when and where they chose to travel, the fact that another group had recently conducted school racial demonstrations in which CORE got no publicity, and the beating and shouting and cursing before a hostile group in the absence of police).

2. As to the finding that Appellant's "project" or mission was not in the public interest, it is unthinkable that any other finding could have been made in the face of a record so replete with evidence of widespread disruption of community affairs, the tremendous tensions created and the burden placed on the city's small police department. The finding that this was done for Appellant's financial gain is a most reasonable and logical inference from the established facts, however, neither of these findings set out in this paragraph were necessary to support the court's action in the issuance of the Preliminary Injunction. Even if they were to constitute error, which they do not, the error would be harmless.

3. Appellant's motions to dismiss, to stay and to consolidate this cause with Civil Action No. 3215 were not well taken.

a.

This is Not a Proper Matter For a Three-Judge Court Under Title 28 U.S.C.A., §2325.

This statute is operative only where there is an action to enjoin, set aside, annul or suspend any order of the Interstate Commerce Commission.

Davidson Transfer & Storage Company v. U. S., 164 F. Sup. 571, 574

U. S. v. Interstate Commerce Commission, 337 U. S. 426, 448, 93 L. Ed. 1451, 1463, 69 S. Ct. 1410

See also: Simpson v. Southwestern Railroad Company, 231 F. 2d 59.

Three-judge courts are a burden on the federal judicial system, and requests to convene such courts (or to reconvene them for ancillary or incidental procedures) are to be strongly construed against the convocation of such courts. They are not to be convened except where clearly demanded under the applicable statutes. The sections governing the convening of Three-Judge District Courts are not a measure of broad social policy to be construed with great liberality but as an enactment, technical in the strict sense of the term and to be applied as such.

Phillips v. U. S., 312 U. S. 246, 85 L. Ed. 800, 61 S. Ct. 480

Stainback v. Mo Hock Ke Lok Po, 336 U. S. 368, 93 L. Ed. 741, 69 S. Ct. 606

b.

No Part of the Relief Here Sought Violates Any Act of Congress in the Regulation of Interstate Commerce.

The granting of the Motion for Preliminary ~~Temporary~~ Injunction ~~here would~~ in nowise casts an undue burden on interstate commerce. In fact, it would remove burdens and threatened burdens on such commerce which would occur if Appellant is allowed to continue to use the interstate facilities in McComb for the purpose of fomenting violence and breaching the peace. Appellees have a legal standing to maintain this suit.

In Re Debs, 158 U. S. 564, 34 L. Ed. 1092, 15 S. Ct. 900.

c.

The Granting of the Preliminary Injunction Does Not Conflict With the Order of the Interstate Commerce Commission in Docket MC 3358.

This ICC order does not purport to confer upon any citizen the right to use interstate commerce facilities for the purpose of fomenting violence or breaching the peace. The requested injunction has no relation whatsoever to any discriminations in the use of terminal facilities by any racial or ethnic group, and it would not in anywise affect the duty to any of the carriers, to whom the Commission's order is directed, in their operations.

d.

There is No Conflict Between the Action Presented to This Court and Any Part of the Action Which is Now Pending Before the Three-Judge Court in Civil Action No. 3215.

Appellant is in error when it asserts that this case is concerned with segregation in interstate bus facilities in McComb City. The Preliminary Injunction is expressly restricted to preventing threatened, continuing and irreparable breaches of the peace and good order in the City of McComb City. It in no way restricts the right to use the interstate terminal facilities there for purposes other than fomenting violence and provoking breaches of the peace. The rules of comity cannot apply where the court to which comity is afforded would not have jurisdiction of the action. The issues here are issues of fact, not of construction of any statute or ordinance, wherefore no Three-judge court issue is or could be raised. Certainly, the court in Civil Action No. 3215 had no intention of authorizing the provocation of breaches of the peace or the fomentation of violence in the McComb terminal facilities.

The injunction in question here acts only upon those who misuse the terminal facilities. It is not intended to in any way affect those who may wish to use the facilities for any other regular or lawful purposes - whether on a racially integrated or racially segregated basis. Similarly, the injunction in suit here would not in any way affect the duties of the municipal officials under the preliminary injunction issued in Civil Action No. 3215, nor would it change or modify the extent of the restraint imposed upon their action.

4. For the reasons set out in the Brief of Appellees, the Preliminary Injunction was properly issued.

When Appellant characterizes its activities as "peaceful", and when it asserts that the injunction issued by the District Court forbids it to assist, finance or encourage integration, and when it asserts that the injunction issued "without a shred of evidence" that its projects were intended to provoke violence or disorder, it ignores the undisputed record.

The bald assertion that the injunction of the District Court in this case has created an "aura of fear" is completely unfounded. The injunction restrains Appellant's activities when those activities amount to fomentations of violence and provocation of breaches of the peace. Certainly no court can be presumed to be so biased in the supervision of its processes that it would hold innocent action to constitute contempt of an injunction as direct and specific as this one. The fact that Appellant wishes to indulge in activities so questionable that they might be misconstrued by a court investigating a question of contempt can give rise to no new or greater rights in them which would prevent the issuance of an injunction such as has been issued by the court below.

We respectfully submit that Appellant smarts under the injunction because it reaches its pocketbook, but knowing that relief is not available because of that pain, they place their appeal to this court on the contention that they hurt in a different place. It is highly significant that in its sixth point Appellant complains that the injunction may hurt them "in their business world."

In Point V of its brief, Appellant asserts that the injunction was sought to hinder and delay the integration of the terminal facilities in McComb. This contention may be answered in a single word- BOSH! The record clearly shows that the McComb terminal had been used on a racially integrated basis even prior to the issuance of the injunction in Civil Action No. 3215. Since the issuance of that injunction there has never been a citation for violation thereof, and the record shows that the city officials did everything within their power to fully comply with the letter and the spirit and the intent of that injunction from the minute it was issued. Indeed, the record shows that they went further than that and even extended courtesies and cooperation to these agitators and provocateurs whenever and wherever such cooperation was in the interest of the maintenance of peace and good order.

It is a matter that this court can judicially know that the City of McComb has made no motion to dissolve the preliminary injunction in Cause No. 3215, nor have they requested the court to set the matter down for final hearing, each and both of which legal procedures were and still are available to them if they have any desire to be free of its restraint; for it was issued only preliminarily and does not constitute in anywise a ruling on the merits of the controversy.

Appellant's contention on page eighteen that a court possesses no power to suppress Appellant's "communication of views" in order to avoid violence, is a shockingly inaccurate statement of the law, but at least deserves credit as a frank statement of its position on this appeal.

Appellees respectfully submit that the lower court did not abuse its discretion in granting the preliminary injunction and this cause should be affirmed and remanded.

Respectfully submitted,

LOUIS ALFORD
McComb, Mississippi

WILLIAM A. WILTSHIRE
P. O. Box 1061
McComb, Mississippi

CHARLES CLARK
P. O. Box 1046
Jackson, Mississippi

By Charles Clark
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P. M. STOCKETT, Jr.,
Special Assistant Attorney General
of the State of Mississippi

OF COUNSEL

CERTIFICATE

I, the undersigned, CHARLES CLARK, of counsel for Appellees, certify that a true copy of the foregoing BRIEF OF APPELLEES has been mailed postage prepaid to: Carl Rachlin, 280 Broadway, New York, New York; Derrick A. Bell, 10 Columbus Circle, New York, New York; and Lolis Elie, 2211 Dryads Street, New Orleans, Louisiana, in accordance with the requirements of the rules of this Court, on this the 24th day of July, 1962.

Charles Clark

CHARLES CLARK

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

October Term 1962

No. 19,724
(District Court Docket No. 3223)

THE CONGRESS OF RACIAL EQUALITY,
JOHN DOE AND MARY DOE, Appellants

/vs/

C. H. DOUGLAS, individually and as
Mayor of the CITY OF McCOMB CITY,
MISSISSIPPI, and MR. & MRS. AUBREY
McGEHEE, Appellees

NOTICE OF APPEARANCE OF REPRESENTATIVE FOR AUBREY McGEHEE, DECEASED.

COMES NOW Mrs. Aubrey McGehee, the widow and next of kin of Aubrey McGehee, deceased, and pursuant to Rule 19 of the rules of this Honorable Court, would respectfully show unto this Honorable Court and to the U. S. District Court for the Southern District of Mississippi, where a copy of this notice is also being filed, that Aubrey McGehee, a party-appellee in the Court of Appeals and a party-plaintiff in the District Court, died during the pendency of the appeal in the U. S. Court of Appeals. No suggestion of said death was made on the record of this cause.

Mrs. Aubrey McGehee voluntarily comes before this Court and requests that she be admitted as a party to this litigation as the proper representative of her late husband, now deceased, no executor having been appointed or qualified.

DATED this 12th day of July, 1963.

LOUIS ALFORD
WILLIAM A. WILTSHIRE
Charles Clark
CHARLES CLARK
Attorneys for Mrs. Aubrey McGehee

CERTIFICATE OF SERVICE

I, the undersigned, CHARLES CLARK, of counsel for Mrs. Aubrey McGehee, certify that a true copy of the foregoing notice has been mailed postage prepaid to Carl Rachlin, 280 Broadway, New York, New York; Derrick A. Bell, 10 Columbus Circle, New York, New York; and Lolis Elie, 2211 Dryads Street, New Orleans, Louisiana, in accordance with the requirements of the rules of this Court, on this the 12th day of July, 1963.

Charles Clark
CHARLES CLARK
P. O. Box 1046
1741 Deposit Guaranty Bank
Building
Jackson, Mississippi

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

New Orleans 6, La.
JUN 5 1962

FOR INFORMATION OF ALL COUNSEL--PLEASE READ CAREFULLY:

Re: No. 19724 The Congress of Racial Equality, John Doe and Mary Doe -vs- C. H. Douglas, individually and as Mayor of the City of McComb City, Mississippi, and Mr. & Mrs. Aubrey McGehee.

The record in the above entitled case is in final form. The time for filing BRIEFS is indicated in the following rule:

RULE 24, as amended, Subsections 1, 3 and 4 OF THIS COURT, READ IN PERTINENT PART AS FOLLOWS:

1. The Clerk shall mail a notice to each party or his counsel so soon as the record by printing, or otherwise, is in final form for a hearing. The counsel for the appellant, or petitioner, shall file with the Clerk of this Court within thirty days from the RECEIPT of such notice***twenty copies of a printed brief, one to be signed in handwriting by an attorney of this Court who has entered an appearance in the case; together with a certificate that a copy has been mailed to or previously served on the opposite party or parties. Four copies of typewritten briefs in behalf of poor persons in forma pauperis cases, with a like certificate of service, shall be sufficient. (All such typewritten briefs (motions or petitions, etc.) should be backed when filed.)

3. The Counsel for appellee or respondent shall file with the Clerk of this court within twenty (20) days from the service upon him of opponent's brief***twenty copies of a printed brief, with a certificate that a copy has been mailed to or personally served on his opponent or opponents. His brief shall be of a like character with that required of the appellant or petitioner, except that no specification of errors shall be required and no statement of the case unless that presented by the appellant or petitioner is controverted.

4. Reply or supplemental briefs in printed form, and containing a certificate of service upon opposing counsel, may be filed at any time without special leave of court.

Certificate of service upon all opposing counsel must be incorporated in all copies of briefs, motions, petitions or other documents filed.

Since the Court desires that briefs from all parties be on file for its consideration well in advance of the assigned date for hearing, counsel should make every effort to file their briefs by the date due.

Notice will be issued to all counsel for whom an appearance has been entered of the date and place fixed for hearing, usually at least thirty (30) days in advance thereof.

RULE 25, as amended January 19, 1956, reads in part as follows:

"Not more than one-half hour on each side will be allowed for the argument, without special leave of the court**."

However, counsel for any party may waive oral argument and submit his case on brief, if he so desires, and notifies this office by the date fixed for hearing.

Any written request for special handling not provided for in the Rules, whether by formal motion, letter or otherwise, as well as any information which counsel desire the Clerk to communicate to the Court, should be submitted in quadruplicate, with an original and three legible copies.

EDWARD W. WADSWORTH
Clerk

Standard Form No. 1166a
Form prescribed by
Comptroller General, U. S.
January 29, 1952
(Gen. Reg. No. 115)

(MEMORANDUM)

VOUCHER AND SCHEDULE OF PAYMENTS

Sheet 1 of ______

COURTS
(DEPARTMENT OR ESTABLISHMENT)

D. O. Voucher No. 112

Bu. Schedule No. ______

BUREAU OR OFFICE Clerk, U.S. District Court			
LOCATION OF TRANSMITTING OFFICE Jackson, Mississippi	STATION NO. 1 Jackson	D. O. SYMBOL 4643	

APPROPRIATION SUMMARY: (SYMBOL AND AMOUNT)

10X6855 $550.00

PAID BY
Loryce E. Wharton
4643
May 11, 1962

BUREAU VOUCHER NO. (1)	PAYEE, AND IF NECESSARY, ADDRESS, INVOICE NO. OR OTHER IDENTIFICATION (2)	AMOUNT (3)	D.O. CHECK NO. (4)
1.	Miss Theresa Herbert Post Office Box 610 Gulfport, Mississippi Cost of preparation of record on appeal plus express & insurance, costs advanced by Congress of Racial Equality in case: C.O.R.E. v Douglas et al J 3223 - Civ	486.65	1,854
2.	Treasurer of the United States c/o Miss Loryce E. Wharton, Clerk U.S. District Court, Jackson, Miss. Certifying 253 pages of record on appeal in Jackson Civil Action 3223.	25.30	1,855
3.	Congress of Racial Equality c/o Mr. Carl Rachlin, Attorney 200 Broadway, New York, N.Y. Refund of balance from prepayment of cost of record on appeal in case: C.O.R.E. v Douglas et al J 3223-Civ (Total advanced $550.00)	38.05 ✓	1,856
	GRAND TOTAL	550.00	

May 11, 1962 Loryce E. Wharton, Clerk
MEMORANDUM
By
E. Mathison, Deputy Clerk

16—66064-1 U. S. GOVERNMENT PRINTING OFFICE 16—66064a-2

MSS
546

S EDFRE

CORE VS. E. KOEPPEL LEASING COMPANY INC. QUEENS, NEW YORK 1967

Box 35
Folder 25

State Historical Society of Wisconsin

Please Retain Original Order

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is ______

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed
at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $______

Depreciated Value $ 1150.00 Premature Termination Factor $ 60.00

*At termination vehicle to be returned to ______ City ______ State ______

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66.

Accepted:

E. KOEPPEL LEASING CO.
Lessor
[illegible] L. Koeppel
V.P.

CONGRESS OF RACIAL EQUALITY
Lessee
By Herbert B. Callender
Title Director of Organization

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home
Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at ______ City ______ State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	VALIANT	4 DOOR SEDAN	VH41A62615735

ACCESSORIES AND SPECIAL EQUIPMENT

- ☒ 6 Cyl. Engine
- ☒ Automatic Transmission
- ☒ Radio
- ☒ Heater
- ☐
- ☒ Power Steering
- ☐ Power Brakes
- ☐ Air Conditioning
- ☐ Tinted Glass
- ☐
- ☐ Wheel Covers
- ☐ Whitewall Tires
- ☐ Windshield Washer
- ☐ Outside Mirror
- ☐
- ☐ Seat Belts
- ☐ Two Tone Paint
- ☐
- ☐
- ☐

RATE $ 111.00 per Month
PROPERTY TAX 2.00
Sales Tax $ ______ per Month
TOTAL PAYMENT $ 113.00 per Month
Rental to be paid on 1ST day of each month
to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

TERM 24-26 Months LESSOR OPTION
[illegible] Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

SPECIAL PROVISIONS (If any)

THE THIS CAR IS FOR USE IN LOUISIANA.

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave.   REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY   Phone—Business CO 7-6270   Home
Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at
City   State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	VALIANT	4 DOOR SEDAN	VH41A626122397

ACCESSORIES AND SPECIAL EQUIPMENT

- ☒ 6 Cyl. Engine
- ☒ Automatic Transmission
- ☒ Radio
- ☒ Heater
- ☐
- ☒ Power Steering
- ☐ Power Brakes
- ☐ Air Conditioning
- ☐ Tinted Glass
- ☐
- ☐ Wheel Covers
- ☐ Whitewall Tires
- ☐ Windshield Washer
- ☐ Outside Mirror
- ☐
- ☐ Seat Belts
- ☐ Two Tone Paint
- ☐
- ☐
- ☐

RATE $ 111.00 per Month
PROPERTY TAX 2.00
Sales Tax $ per Month
TOTAL PAYMENT $ 113.00 per Month
Rental to be paid on 1ST day of each month

TERM 24-26 Months LESSOR OPTION
~~Annual~~ Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

SPECIAL PROVISIONS (If any)

THE THIS CAR IS FOR USE IN LOUISIANA.

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed

at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1150.00

Premature Termination Factor $ 60.00

***At termination vehicle to be returned to**

City

State

This Vehicle Lease Order is approved and agreed to this 20 **day of** JANUARY, 19 66.

Accepted:

E. [illegible] LEASING CO.

Lessor

CONGRESS OF RACIAL EQUALITY

Lessee

By Herbert B. Callender

Title Director of Organization

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home

Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at ____ City ____ State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	VALIANT	4 DOOR SEDAN	VH41A62587473

ACCESSORIES AND SPECIAL EQUIPMENT

☒ 6 Cyl. Engine
☒ Automatic Transmission
☒ Radio
☒ Heater
☐

☒ Power Steering
☐ Power Brakes
☐ Air Conditioning
☐ Tinted Glass
☐

☐ Wheel Covers
☐ Whitewall Tires
☐ Windshield Washer
☐ Outside Mirror
☐

☐ Seat Belts
☐ Two Tone Paint
☐
☐
☐

RATE $ 111.00 per Month
PROPERTY TAX 2.00
Sales Tax $ ____ per Month
TOTAL PAYMENT $ 113.00 per Month
Rental to be paid on 1ST day of each month

TERM 24-26 Months LESSOR OPTION
Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN LOUISIANA.

(REV. 5-64) 17

THE REYNOLDS & REYNOLDS CO. CELINA OHIO

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($ 100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1150.00

Premature Termination Factor $ 60.00

At termination vehicle to be returned to
City State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By
V. Pres

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert B. Callender
Title Director of Organization

2

CLOSED END
Lease No.______
Unit No.______
Delivery Date______

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home______

Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at______ City ______ State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	VALIANT	4 DOOR SEDAN	3VH41A62577913

ACCESSORIES AND SPECIAL EQUIPMENT

- ☒ 6 Cyl. Engine
- ☒ Automatic Transmission
- ☒ Radio
- ☒ Heater
- ☐
- ☒ Power Steering
- ☐ Power Brakes
- ☐ Air Conditioning
- ☐ Tinted Glass
- ☐
- ☐ Wheel Covers
- ☐ Whitewall Tires
- ☑ Windshield Washer
- ☑ Outside Mirror
- ☐
- ☑ Seat Belts
- ☐ Two Tone Paint
- ☐
- ☐
- ☐

RATE $ 111.00 per Month
PROPERTY TAX 4.00
Sales Tax $ 3.33 per Month
TOTAL PAYMENT $ 118.33 per Month
Rental to be paid on 1ST day of each month
to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

TERM 24-26 Months LESSOR OPTION
Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN FLORIDA

FORM. 8-801

THE REYNOLDS & REYNOLDS CO. CELINA, OHIO

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed

at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $1150.00 Premature Termination Factor $ 60.00

At termination vehicle to be returned to

City State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 1966.

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By L. Koeppel

Title V.P.

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert E. Callender

Title Director of Organization

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 **Home**

Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following **vehicle to be delivered** at

City State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	VALIANT	4 DOOR SEDAN	VH41A62612236

ACCESSORIES AND SPECIAL EQUIPMENT

☒ 6 Cyl. Engine
☒ Automatic Transmission
☒ Radio
☒ Heater
☐
☒ Power Steering
☐ Power Brakes
☐ Air Conditioning
☐ Tinted Glass
☐
☐ Wheel Covers
☐ Whitewall Tires
☐ Windshield Washer
☐ Outside Mirror
☐
☐ Seat Belts
☐ Two Tone Paint
☐
☐
☐

RATE $ 111.00 per Month
PROPERTY TAX 2.00
Sales Tax $ per Month
TOTAL PAYMENT $ 113.00 per Month

TERM 24-26 Months LESSOR OPTION
~~Annual~~ Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢

Rental to be paid on 1ST day of each month
Security Deposit $ 50.00

to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

SPECIAL PROVISIONS (If any)

TH THIS CAR IS FOR USE IN LOUISIANA.

(REV. 5-64) 17

THE REYNOLDS & REYNOLDS CO. CELINA, OHIO

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1150.00 Premature Termination Factor $ 60.00

At termination vehicle to be returned to City State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66.

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By F. L. Koeppel

Title V. Pr.

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert E. Callender

Title Director of Organization

2

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUIALITY Phone—Business CO 7-6270 Home

Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at ____ City ____ State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	VALIANT	4 DOOR SEDAN	VH41A6√609196

ACCESSORIES AND SPECIAL EQUIPMENT

- ☒ 6 Cyl. Engine
- ☒ Automatic Transmission
- ☒ Radio
- ☒ Heater
- ☐
- ☒ Power Steering
- ☐ Power Brakes
- ☐ Air Conditioning
- ☐ Tinted Glass
- ☐
- ☐ Wheel Covers
- ☐ Whitewall Tires
- ☐ Windshield Washer
- ☐ Outside Mirror
- ☐
- ☐ Seat Belts
- ☐ Two Tone Paint
- ☐
- ☐
- ☐

RATE $ 111.00 3.00 per Month

Sales Tax $ 3.33 per Month

TOTAL PAYMENT $ 117.33 per Month

Rental to be paid on 1ST day of each month

to E. KOEPPEL LEASING CO. **at** 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

TERM 24-26 Months LESSOR OPTION

[redacted] **Mileage Allowance** 50,000

Excess Mileage Charge per Mile .02 ¢

Security Deposit $ 50.00

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN SOUTH CAROLINA

(REV. 5-64) ✓

THE REYNOLDS & REYNOLDS CO. CELINA, OHIO

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($ 100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed

at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1150.00

Premature Termination Factor $ 60.00

At termination vehicle to be returned to

City State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66.

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By

Title V. Pres

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert E. Callender

Title Director of Organization

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home

Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at

City State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	FURY III	4 DOOR HARDTOP	PH43E6r r09740

ACCESSORIES AND SPECIAL EQUIPMENT

☒ 8 Cyl. Engine
☒ Automatic Transmission
☒ Radio
☒ Heater
☐

☒ Power Steering
☐ Power Brakes
☐ Air Conditioning
☐ Tinted Glass
☐

☐ Wheel Covers
☐ Whitewall Tires
☐ Windshield Washer
☐ Outside Mirror
☐

☐ Seat Belts
☐ Two Tone Paint
☐
☐
☐

RATE $ 121.00 per Month
PROPERTY TAX 4.25
Sales Tax $ 3.63 per Month
TOTAL PAYMENT $ 128.88 per Month
Rental to be paid on 1ST day of each month

TERM 24-26 Months LESSOR OPTION
~~Annual~~ Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN SOUTH CAROLINA

FORM CLS-225 (REV. 5-64)

THE REYNOLDS & REYNOLDS CO. CELINA, OHIO

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($ 100.00 deductible)	☐
☒	Public Liability ($250,000 /$500,000 Amount)	☐
☒	Property Damage ($25,000 Amount)	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1400.00 Premature Termination Factor $ 62.50

At termination vehicle to be returned to City State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66.

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By

Title V. P.

CONGRESS OF RACIAL EQUAL
Lessee

By Herbert E. Call

Title Director of Org

2

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home
Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to **be delivered at** City State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	FURY III	4 DOOR ~~SEDAN~~	PH43E62209741

ACCESSORIES AND SPECIAL EQUIPMENT

☒ 8 Cyl. Engine
☒ Automatic Transmission
☒ Radio
☒ Heater
☐
☒ Power Steering
☐ Power Brakes
☐ Air Conditioning
☐ Tinted Glass
☐
☐ Wheel Covers
☑ Whitewall Tires
☑ Windshield Washer
☑ Outside Mirror
☐
☑ Seat Belts
☐ Two Tone Paint
☐
☐
☐

RATE $ 121.00 per Month
PROPERTY TAX 5.00
Sales Tax $ 3.63 per Month
TOTAL PAYMENT $ 129.63 per Month
Rental to be paid on 1ST day of each month
to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

TERM 24-26 Months LESSOR OPTION
~~Annual~~ Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN FLORIDA

FORM CLS 325 (REV. 5-64)

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($ 100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000 Amount)	☐
☒	Property Damage ($ 25,000 Amount)	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1400.00

Premature Termination Factor $ 62.50

At termination vehicle to be returned to

City

State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66.

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By E. L. Koeppel
Title V. Pres.

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert E. Callender
Title Director of Organization

199—Summons, Supreme Court, without Notice. c

JULIUS BLUMBERG, INC., LAW BLANK PUBLISHERS
80 EXCHANGE PLACE AT ~~BROADWAY~~, NEW YORK

Supreme Court of the State of New York
County of QUEENS

E. KOEPPEL LEASING COMPANY INC., *Plaintift*	*Plaintiff designates* Queens *County as the place of trial.*
against	**Summons**
CONGRESS OF RACIAL EQUALITY INC., and CARL RACHLIN *Defendant*	*Plaintiff resides in* Queens *County.*

To the above named Defendant s:

You are hereby Summoned *to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.*

Dated, March 3rd 1967

CONGRESS OF RACIAL EQUALITY INC.,
200 West 135th Street,
New York, N.Y.

BERNARD SAMUELS
Attorney for Plaintiff
Office and Post Office Address
16 Court Street
Brooklyn, N.Y.

Tr. 5-1073

SUPREME COURT : QUEENS COUNTY

- -:

E. KOEPPEL LEASING COMPANY INC.,

Plaintiff,

-against-

COMPLAINT

CONGRESS OF RACIAL EQUALITY INC., and
CARL RACHLIN,

Defendants,

- -:

Plaintiff alleges:

FIRST CAUSE OF ACTION AGAINST CONGRESS OF RACIAL EQUALITY INC.,

FIRST: That at all of the times hereinafter mentioned, plaintiff, E, KOEPPEL LEASING COMPANY INC., was and still is a domestic corporation, and will hereafter be referred to as "KOEPPEL".

SECOND: Upon information and belief, the defendant CONGRESS OF RACIAL EQUALITY INC., was at all times hereinafter mentioned, and still is, a domestic corporation, and will hereafter be referred to as "CORE".

THIRD: That at all of the times hereinafter mentioned, KOEPPEL had its principal office in the County of Queens, City and State of New York, and engaged in the business of renting motor vehicles to the public at large.

FOURTH: That on January 20, 1966, KOEPPEL and CORE entered into an agreement in writing, by the terms of which KOEPPEL rented to CORE, and the latter hired, fourteen (14) motor vehicles upon the terms and conditions set forth in the said agreement. That a copy of said agreement and the vehicles herein referred to is attached hereto and made a part hereof.

FIFTH: That pursuant to the terms of said agreement, there was due and owing to the plaintiff from CORE, as of the 28th day of February, 1967, the sum of $ 22,872.73 , for accrued unpaid rent, damages by premature termination, and reimbursement for repairs to the aforesaid vehicles.

SIXTH: That demand for the payment of said sum was made of the defendant CORE, and said defendant has failed and refused, and still fails and refuses to pay said sum.

SEVENTH: That as a result thereof, plaintiff has been damaged to the extent of $22,872.73 , which sum is still due and owing to plaintiff from the defendant CORE.

SECOND CAUSE OF ACTION AGAINST CONGRESS OF RACIAL EQUALITY INC.

EIGHTH: Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraphs numbered "FIRST", "SECOND", "THIRD", and "FOURTH", of the complaint herein with the same force and effect as though set forth at length herein.

NINTH: That in accordance with the provisions of the agreement hereto annexed, KOEPPEL delivered to CORE, the motor vehicles set forth in the leasing schedule attached to the said agreement.

TENTH: That heretofore, CORE cancelled the said leasing agreement hereto attached.

ELEVENTH: That thereafter, KOEPPEL demanded that CORE return the vehicles heretofore leased to it.

TWELFTH: That CORE has failed and refused, and fails and refuses to return said vehicles.

THIRTEENTH: That the value of said vehicles aggregates $ 17,300.00 .

FOURTEENTH: That as a result thereof, plaintiff has been damaged in the sum of $ 17,300.00 .

FOR A THIRD CAUSE OF ACTION AGAINST THE DEFENDANT CARL RACHLIN

FIFTEENTH: That on January 31,1966, KOEPPEL and CORE, entered into an agreement in writing, a copy of which is hereto annexed and made a part hereof, by the terms of which there was deposited by CORE, with the defendant CARL RACHLIN, hereafter referred to as "RACHLIN", the sum of $10,000.00, in escrow, to guarantee CORE'S performance of all of its obligations under the agreement made by and between KOEPPEL and CORE, on January 20,1966.

SIXTEENTH: That said agreement provided among other things that the fund therein provided for was to be used to satisfy any claims that KOEPPEL might have against CORE, arising out of the terms and conditions of the leasing agreement dated January 20,1966, heretofore referred to herein and hereto attached.

SEVENTEENTH: That plaintiff by virtue of CORE'S default in the payment of rental charges, reimbursement for repairs to the vehicles referred to in the leasing agreement, premature termination damages and failure to return the vehicles after due demand therefor, has been damaged in the sum of $ 40,172.73 , an amount in excess of that deposited with RACHLIN.

EIGHTEENTH: That as a result of the foregoing, plaintiff is entitled to the entire sum of money held by RACHLIN as escrowee, under the terms and provisions of the agreement dated January 31,1966, hereto attached.

NINETEENTH: That demand therefor, was made of RACHLIN, who has failed and refused and still fails and refuses to pay said sum to plaintiff.

TWENTIETH: That plaintiff asserts no personal claim against RACHLIN, except that he be required to pay said sum of $10,000.00, to the plaintiff.

WHEREFORE, plaintiff demands judgment against CORE on the First Cause of Action, in the sum of $ 22,872.73 ; against CORE, on the Second Cause of Action in the sum of $ 17,300.00 , both with interest from February 1,1967, and both with costs and disbursements of this action, and against the defendant RACHLIN, on the Third Cause of Action, in the sum of $10,000.00, together with any interest said monies may have earned from date of deposit of same with RACHLIN, without the costs and disbursements of this action.

Yours etc.,

BERNARD SAMUELS
Attorney for Plaintiff
16 Court Street
Brooklyn, N.Y.

INDIVIDUAL VERIFICATION

STATE OF NEW YORK
COUNTY OF } ss.:

, being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me,
this day of 19

CORPORATE VERIFICATION

STATE OF NEW YORK
COUNTY OF QUEENS } ss.:

EZIEL KOEPPEL, being duly sworn, deposes and says that deponent is the President of E. KOEPPEL LEASING COMPANY INC. the Corporation named in the within action; that deponent has read the foregoing complaint and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because plaintiff is a domestic corporation. Deponent is an officer thereof, to wit, its president. The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows: Books and records of plaintiff in deponent's care and control.

Sworn to before me,
this 9th day of March 1967

EZIEL KOEPPEL

BERNARD SAMUELS
Notary Public, State of New York
No. 41-8750575
Qualified in Queens County
Commission Expires March 30, 1968

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK
COUNTY OF } SS.:

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

at No.

deponent served the within

upon

the herein,

by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.

Sworn to before me,
this day of 19

AFFIDAVIT OF SERVICE BY MAIL

STATE OF NEW YORK
COUNTY OF } SS.:

being duly sworn, deposes and says; that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19

deponent served the within

upon

attorney(s) for

in this action, at

the address designated by said attorney(s) for that purpose by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in – a post office – official depository under the exclusive care and custody of the United States post office department within New York State.

Sworn to before me,
this day of 19

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK
COUNTY OF

The undersigned, being an attorney duly admitted to practice in the courts of the State of New York shows: that he is the attorney(s) of record or an attorney acting as of counsel with the attorney of record for the in the within action; that he has read the foregoing

and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes them to be true. He further states that the reason this affirmation is made by him and not by the

The grounds of his belief and sources of information as to all matters not stated upon his knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury, pursuant to Rule 2106 CPLR.

Signature

Dated:

Typed

ATTORNEY'S CERTIFICATION

STATE OF NEW YORK
COUNTY OF

The undersigned attorney certifies pursuant to Section 2105 CPLR that the within has been compared by the undersigned with the original on file in the office of and found to be a true and complete copy.

Signature

Dated:

Typed

Index No. *Year 19*

SUPREME COURT : QUEENS COUNTY

E. KOEPPEL LEASING COMPANY INC.,
Plaintiff,

-against-

CONGRESS OF RACIAL EQUALITY INC.
and CARL RACHLIN,
Defendants.

SUMMONS AND VERIFIED COMPLAINT

BERNARD SAMUELS
Attorney(s) for Plaintiff
Office and Post Office Address
16 COURT STREET
BROOKLYN, N. Y. 11201
TRIANGLE 5-1073

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated, *19*

Attorney(s) for

NOTICE OF ENTRY

Sir:- Please take notice that the within is a (certified) true copy of a duly entered in the office of the clerk of the within named court on *19*

Dated,

Yours, etc.
BERNARD SAMUELS
Attorney(s) for
Office and Post Office Address
16 COURT STREET
BROOKLYN, N. Y. 11201

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:- Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.
one of the judges of the within named Court, at

on the *day of* *19*
at *M.*

Dated,

Yours, etc.
BERNARD SAMUELS
Attorney(s) for
Office and Post Office Address
16 COURT STREET
BROOKLYN, N. Y. 11201

To

Attorney(s) for

CLOSED END
Lease No.

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

LEASE AGREEMENT

Lease Agreement, made this 20 day of JANUARY 19 66,

between E. KOEPPEL LEASING CO. (hereinafter called "Lessor"),

and CONGRESS OF RACIAL EQUALITY (hereinafter called "Lessee").
(Firm Name)

1. Leased Vehicles, Rental Payment and Term. Lessor hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Lessor, the motor vehicle(s) specified on the Vehicle Lease Order form(s), executed by Lessee, and accepted by Lessor, at the rental rate specified on each Order form. Said Order form(s) is incorporated herein by reference and hereafter referred to as Lessee's Order. The term "vehicle" when used in this Agreement shall mean motor vehicle(s) leased hereunder by Lessee.

Lessee agrees to pay each total monthly rental in advance without deduction, setoff or counterclaim, and also agrees to pay as additional rent a charge per mile for mileage in excess of agreed allowance on the dates and at the place as specified in Lessee's Order. If the delivery date is other than the first or the last day of a month, the monthly rental rate shall be prorated for that month.

The normal term of this Agreement with respect to the vehicle shall be as specified in Lessee's Order and shall commence on the delivery date of such vehicle. Lessor is hereby authorized to insert the delivery date and vehicle identification number on Lessee's Order.

This Agreement shall constitute the master lease and shall be deemed to comprise as many individual leases as there are vehicles which may be delivered by Lessor to Lessee under individual orders. This Agreement is one of leasing only and the Lessee shall not have or acquire any right, title, or interest in or to the vehicle except the right to use or operate it as provided herein.

2. Maintenance and Repairs. Lessee shall keep and maintain each vehicle in good operating condition and working order, using as a guide the maintenance program prescribed in Owner's Manual, and shall perform all preventive maintenance required to insure full validation of the manufacturer's warranty.

Lessee shall be responsible for the cost of all gasoline, oil required between changes, and all washing, polishing and storage, to the extent necessary to maintain the vehicle in good condition. Lessee shall maintain proper oil, battery and cooling levels and protection against freezing of the radiator and engine.

Lessor will be responsible for such maintenance costs as are assumed by it on Lessee's Order and except for such costs, Lessee will pay for all maintenance not covered by the manufacturer's warranty. If any vehicle for which Lessor has agreed to provide maintenance is out of service for repairs for more than thirty (30) days, rent shall cease until the vehicle has been repaired or a substitute vehicle has been provided Lessee.

3. Insurance. Insurance shall be procurred for each vehicle and shall be maintained during the term of the lease as provided in Lessee's Order with companies satisfactory to Lessor. Prior to delivery of any vehicle, proof of insurance will be provided as required by Lessee and/or Lessor.

If Lessee provides insurance, such insurance shall be endorsed to provide that Insurer will notify Lessor immediately in the event the insurance should be materially altered or cancelled, and Lessor may (but shall not be obligated to) secure necessary insurance protection at Lessee's expense.

Lessor's charges for insurance are subject to escalation annually to reflect changes in the cost of insurance to Lessor. If such charges increase, Lessee shall have the option of providing his own insurance.

If Lessor has agreed to provide insurance, Lessor may nevertheless require that such insurance be provided by Lessee if Lessor deems the vehicle to be exposed to extraordinary risk or if Lessor's Insurer cancels its policies covering such vehicle. Lessor will make an appropriate adjustment in the monthly rental charges in event Lessee is required to provide insurance.

FORM CLS 245-C (REV 5-64)

Lessee and Lessor, their agents or employees, shall comply with all the terms and conditions of said insurance policy, including the immediate reporting of all accidents to Lessor and Insurer, and do all things necessary or proper to protect or preserve the other party's rights as a named insured in said insurance policies.

All insurance policies covering the vehicle shall be endorsed to protect as their interest may appear, Lessee, Lessor and any other person having an interest in the vehicle.

4. Taxes, Licensing, Registration. The cost of all licensing, registration of the vehicle in Lessor's name, and such taxes as are specified shall be paid for as provided in Lessee's Order, and Lessee shall pay all other taxes and/or government assessments, fees and charges imposed on or in connection with any vehicle operated pursuant to this Agreement. Lessor shall pay and bear all net income taxes on rent payable hereunder.

5. Delivery and Return of Vehicles. Delivery and return of the vehicle shall be at Lessor's place of business or as specified in Lessee's Order. Lessee agrees to return the vehicle at the end of the normal lease term or any extension thereof, or upon earlier termination of the lease, in same condition as when delivered, ordinary wear and tear excepted, or to pay as additional rent Lessor's cost of repairing or replacing any damage to the vehicle not included in ordinary wear and tear. Lessee and Lessor, or their agents, shall inspect the returned vehicle and provide a jointly signed report on the condition of the vehicle.

6. Premature Termination.

a. Lessee may terminate this lease with respect to any vehicle at any time after six (6) months from the date of delivery of the same, and prior to the end of the lease term, by giving Lessor thirty (30) days notice in writing, provided that Lessee shall bear any loss or receive any gain which results from final disposition of a vehicle. When a vehicle is returned to Lessor upon such termination, Lessor shall promptly obtain the highest available cash offer at wholesale for the vehicle and notify Lessee in writing of the offer indicating the gain or loss computed pursuant to this paragraph, which would result from acceptance of such offer. Lessee will notify Lessor within five business days thereafter that it will accept such gain (or bear such loss, as the case may be), or will otherwise arrange for the immediate sale of the vehicle in order to obtain the Termination Value thereof for the Lessor. If Lessee fails to make any election within five business days of receipt of such notice, Lessor is authorized to accept such offer and credit or debit Lessee as appropriate. All payments due Lessor as a result of any premature termination shall be due as soon as the amount of the payment is ascertained.

b. The gain or loss on any final disposition of a vehicle as a result of action taken under this paragraph 6 shall be the difference between the offer received and the Termination Value of the vehicle. Termination Value shall be the Depreciated Value as specified in Lessee's Order, plus the product of the Premature Termination Factor times the number of months from the effective date of termination to the end of the lease term, plus the unamortized portion of any annual prepaid license fees and applicable taxes paid by the Lessor.

c. If any vehicle is lost or stolen or so damaged that it cannot, in Lessor's judgment, be economically repaired, the lease with respect to such vehicle shall terminate effective thirty (30) days from the date of notice by Lessee to Lessor of the loss, theft or damage. Lessee shall pay Lessor the Termination Value of such vehicle computed as provided in sub-paragraph (b) above, on the effective date of termination, less the proceeds from any insurance settlement paid the Lessor.

7. Use of Vehicles. Lessee shall permit only safe, careful, licensed and authorized drivers to operate the vehicles. Lessee agrees upon written complaint from Lessor, specifying any excessive collision claims or an indication of any other incompetence by or of any driver, that Lessee will immediately take such action as is necessary to correct these conditions.

Vehicles shall not be used for hire or public transportation and vehicle use shall, except with written permission of Lessor, be confined to the United States and Canada. Lessee shall not permit any vehicle to be used in violation of any federal, state or municipal statutes, laws, ordinances, rules or regulations or contrary to the provisions of any applicable insurance policy, and Lessee shall indemnify and hold Lessor harmless from any and all fines, forfeitures, damages or penalties resulting from violation of such laws, ordinances, rules or regulations.

8. Indemnity. Lessee shall defend, indemnify and hold harmless Lessor and the officers and employees of Lessor, from and against any damage, loss, theft, or destruction of any vehicle, and against all losses, liabilities, damages, injuries, claims, demands, costs and expenses of every kind and nature whether or not covered by insurance, including legal fees and disbursements arising out of and in connection with the use, condition or operation of vehicles during the lease term.

9. Lessee's Damages. Lessor shall not be responsible to Lessee, or to its agents, servants or employees, for any loss of business or other damage caused by any interruption of the service herein to be furnished by Lessor, or for the time lost in the repairing or replacing of any vehicles, nor for any loss, injury or damage arising out of or relating to Lessor's failure to deliver vehicles pursuant hereto by reason of strikes or other causes beyond control of Lessor, nor for any other losses or damages sustained by Lessee hereunder, except as specifically provided in Lessor's undertaking in this Agreement. It is expressly understood that Lessor assumes no liability or responsibility for any acts or omissions of Lessee or of Lessee's agents or employees, or for any property of Lessee, its agents or employees, or any other person's property damaged, lost or stolen in or from the vehicles.

10. Default. Time is of the essence of this Agreement and in the event that Lessee fails to pay in full on the date due any rental payment due hereunder, or defaults in the performance of any of the other terms, conditions and covenants contained herein, or in the event of Lessee's bankruptcy or insolvency, or if the leased vehicles be levied upon or encumbered in any way, or if at any time, in the exclusive judgment of Lessor, his rights in the leased vehicles in any way shall be prejudiced or rendered insecure, Lessor shall have the right to take immediate possession of the vehicles wherever found, with or without process of law, and to terminate the lease with the respect to such vehicles, and Lessee expressly authorizes Lessor and its agents to enter on any premises where the vehicle may be found for the purpose of repossessing such vehicles, and expressly waives any further interest in the vehicles and any right of action arising out of such entry and repossession. Lessor shall not be liable in damages for any termination pursuant to this paragraph and no termination of this Agreement by Lessor or repossession of any vehicles shall in any way relieve Lessee of liability for any sum or sums due or to become due Lessor under this Agreement, or for any damages which Lessor shall have sustained as a result of any default by Lessee, including but not limited to the cost of repossession including attorney's fees. If Lessee fails to accept delivery of any vehicle ordered hereunder, Lessor may retain any security deposit as liquidated damages.

11. General and Miscellaneous. This instrument constitutes the entire Agreement between the parties hereto and shall be binding on their heirs, executors, administrators and their legal representative, successors and assigns. All of Lessee's Orders executed by Lessee and accepted by Lessor pursuant to this Agreement expressly constitute a part of this Agreement, and Lessee authorizes Lessor to apply to the payment of any sums due Lessor hereunder as rent or otherwise, any security deposit or other sum of money belonging to Lessee, which may come into Lessor's possession. This Agreement may not be amended or altered in any manner except in writing signed by both parties. No forbearance to exercise any rights or privileges under this Agreement or waiver of any breach of any of its terms shall be construed as a waiver of any such terms, rights or privileges, but the same shall continue and remain in full force and effect the same as if no such forbearance or waiver had occurred.

Neither this Agreement nor any interest herein may be assigned by Lessee without the prior consent of Lessor thereto in writing. This lease or its interest or any rent due or to become due may, however, be assigned by Lessor without consent of Lessee, but subject to the rights of Lessee hereunder.

This Agreement shall be interpreted under and governed by the law of the state in which Lessor maintains its principal place of business. If any provision hereof or the application of any provision to any person or circumstances is held invalid or unenforceable, the remainder hereof and the application of such provision to other persons or circumstances shall remain valid and enforceable.

Any notice given by one party to the other under this Agreement shall be given in writing at the address of the other party set out in Lessee's Order, or at such other address as may have been furnished in writing for such purpose.

12. Special Provisions and Deletions. Special provisions and deletions, if any, are listed below:

13. SEE SCHEDUALE 'A'

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

E. KOEPPEL LEASING CO. (Lessor)	CONGRESS OF RACIAL EQUALITY (Lessee)
By L. Koeppel	By Herbert E. Callender
V.P. (Title)	Director Organization Dept. (Title)

2

CLOSED END
Lease No. ____________
Unit No. ____________
Delivery Date ____________

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home ____________

Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at ____________ City ____________ State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	FURY III	SEDAN 4 DOOR [redacted]	PH 41E66 130118

ACCESSORIES AND SPECIAL EQUIPMENT

- ☒ 8 Cyl. Engine
- ☒ Automatic Transmission
- ☒ Radio
- ☒ Heater
- ☐
- ☒ Power Steering
- ☐ Power Brakes
- ☐ Air Conditioning
- ☐ Tinted Glass
- ☐
- ☐ Wheel Covers
- ☑ Whitewall Tires
- ☑ Windshield Washer
- ☑ Outside Mirror
- ☐
- ☑ Seat Belts
- ☐ Two Tone Paint
- ☐
- ☐
- ☐

RATE $ 121.00 per Month

PROPERTY TAX -------

Sales Tax $ 6.05 per Month

TOTAL PAYMENT $ 127.05 per Month

Rental to be paid on 1ST day of each month

to E. KOEPPEL LEASING CO.

TERM 24-26 Months LESSOR OPTION

[redacted] Mileage Allowance 50,000

Excess Mileage Charge per Mile .02 ¢

Security Deposit $ 50.00

at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN NEW YORK

FORM CLS 225 (REV. 5-64) ✓

THE REYNOLDS & REYNOLDS CO. CELINA OHIO

PROVISIONS of the LEASE.

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($ 100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☒	Snow-tire Service GIVEN 2/1/66 ON DELIVERY	☐

Normal maintenance repairs to be performed at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1400.00 **Premature Termination Factor $** 62.50

At termination vehicle to be returned to Jamaica (City) NY (State)

This Vehicle Lease Order is approved and agreed to this 20 **day of** JANUARY, 19 66.

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By L. Koeppel

Title V. Pres.

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert E. Callender

Title Director of Organization

2

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home

Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at

City State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	PLYMOUTH	FURY III	4 DOOR SEDAN	PH41E66100042 ✓

ACCESSORIES AND SPECIAL EQUIPMENT

☒ 8 Cyl. Engine
☒ Automatic Transmission
☒ Radio
☒ Heater
☐

☒ Power Steering
☐ Power Brakes
☐ Air Conditioning
☐ Tinted Glass
☐

☐ Wheel Covers
☑ Whitewall Tires
☑ Windshield Washer
☑ Outside Mirror
☐

☑ Seat Belts
☐ Two Tone Paint
☐
☐
☐

RATE $ 121.00 per Month
PROPERTY TAX 5.00
Sales Tax $ 3.63 per Month
TOTAL PAYMENT $ 129.63 per Month
Rental to be paid on 1ST day of each month

TERM 24-26 Months LESSOR OPTION
~~Annual~~ Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

to E. KOEPPEL LEASING CO. at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN FLORIDA

THE REYNOLDS & REYNOLDS CO. CELINA OHIO

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($ 100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☐	Snow-tire Service	☐

Normal maintenance repairs to be performed at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1400.00

Premature Termination Factor $ 62.50

At termination vehicle to be returned to

City

State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By

Title V. P.

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert E. Callender

Title Director of Organization

2

CLOSED END
Lease No.
Unit No.
Delivery Date

E. KOEPPEL LEASING CO., Inc.

162-19 Hillside Ave. REpublic 9-3400
JAMAICA 32, NEW YORK

Licensed by CHRYSLER LEASING CORPORATION

VEHICLE LEASE ORDER

Lessee CONGRESS OF RACIAL EQUALITY Phone—Business CO 7-6270 Home
Address 38 PARK ROW, NEW YORK CITY, NEW YORK

I/we hereby order for Lease under the terms of Lessor's Lease Agreement, which is incorporated herein by reference, the following vehicle to be delivered at
City State

YEAR	MAKE	MODEL	BODY TYPE	SERIAL NUMBER
1966	DODGE	POLARA 318	4 DOOR SEDAN	DE41 E66 195690

ACCESSORIES AND SPECIAL EQUIPMENT

- ☒ 8 Cyl. Engine
- ☒ Automatic Transmission
- ☒ Radio
- ☒ Heater
- ☐
- ☒ Power Steering
- ☐ Power Brakes
- ☐ Air Conditioning
- ☐ Tinted Glass
- ☐
- ☒ Wheel Covers
- ☐ Whitewall Tires
- ☐ Windshield Washer
- ☐ Outside Mirror
- ☐
- ☐ Seat Belts
- ☐ Two Tone Paint
- ☐
- ☐
- ☐

RATE $ 121.00 per Month
Sales Tax $ 3.85 per Month
TOTAL PAYMENT $ 124.85 per Month
Rental to be paid on 1ST day of each month
to E. KOEPPEL LEASING CO., at 162-19 HILLSIDE AVENUE, JAMAICA, N.Y.

TERM 24-26 Months LESSOR OPTION
[redacted] Mileage Allowance 50,000
Excess Mileage Charge per Mile .02 ¢
Security Deposit $ 50.00

SPECIAL PROVISIONS (If any)

THIS CAR IS FOR USE IN OHIO

[illegible] (REV. 5-64)

THE REYNOLDS & REYNOLDS CO. CELINA OHIO

PROVISIONS of the LEASE

LICENSE AND TAXES

Provided by Lessor		Provided by Lessee
☒	State License	☐
☐	Sales Tax	☒
☐	Excise Tax	☒
☐	Personal Property Tax	☒
	All other Taxes	☒

INSURANCE

☒	Comprehensive ($ -0- deductible)	☐
☒	Fire and Theft -0- DEDUCTIBLE	☐
☒	Collision ($100.00 deductible)	☐
☒	Public Liability ($ 250,000 /$ 500,000) Amount	☐
☒	Property Damage ($ 25,000) Amount	☐
☐	First $ 100.00 of any Collision Damage	☒

If insurance secured by Lessee, agent is

MAINTENANCE

☒	Mechanical Maintenance Repairs	☐
☒	Lubrication and Filter Changes	☐
☒	Oil Changes	☐
☒	Anti Freeze	☐
☒	Tires (Maximum 5)	☐
☒	Snow-tire Service	☐

Normal maintenance repairs to be performed
at SPECIFIED DEALERS

If Lessor provides maintenance, Lessee shall obtain from Lessor prior approval for any maintenance in excess of $

Depreciated Value $ 1400.00 Premature Termination Factor $ 62.50

At termination vehicle to be returned to City State

This Vehicle Lease Order is approved and agreed to this 20 day of JANUARY, 19 66

Accepted:

E. KOEPPEL LEASING CO.
Lessor

By

CONGRESS OF RACIAL EQUALITY
Lessee

By Herbert E. Callender

Title Director of Organization

Agreement made this 31st day of January, 1966 between the Congress of Racial Equality hereinafter called "CORE" Carl Rachlin, hereinafter called "RACHLIN" and E. Koeppel Leasing Company, Inc. hereinafter called "KOEPPEL".

Whereas KOEPPEL and CORE are about to enter an agreement for the leasing of certain automobiles by KOEPPEL to CORE under terms and conditions more specifically set forth in an agreement between them dated January 20, 1966

AND

Whereas KOEPPEL requires that certain sums be held in escrow by RACHLIN in the event of the default by CORE of certain terms and conditions of the aforesaid agreement between KOEPPEL and CORE.

Now, therefore in consideration of the mutual promises of the parties it is agreed as follows:

1. There will be deposited in RACHLIN'S name the sum of $10,000 (TEN THOUSAND DOLLARS) in the Carver Federal Savings and Loan Association (hereinafter called "CARVER") located at 75 West 125th Street, New York. That account shall bear the legend after the name of RACHLIN either "as escrowee" or "as Attorney". That account shall remain in the said bank, in a savings account therein, until all claims if any are settled from the date hereof unless agreed to otherwise by the parties.
2. That the said account will not be drawn against or depleted in any way, nor assigned during the period of this agreement except upon demand of KOEPPEL as set forth below in paragraphs 3 and 4.
3. In the event that CORE shall be in default for a period of two months in the payments due by CORE under the agreement dated January 20, 1966 upon demand by KOEPPEL to RACHLIN in writing

specifying the amount of default and the period of the said default, then RACHLIN shall pay over the said sum to KOEPPEL from the aforesaid $10,000 held in CARVER.

4. In the event that CORE shall be in default for a period of 3 months KOEPPEL may, as set forth more fully in the said agreement dated January 20, 1966 between CORE and KOEPPEL, terminate said agreement and recover any sums provided for by premature termination in said agreement. KOEPPEL thereupn may in writing demand upon RACHLIN for any sums allegedly due KOEPPEL as the result of the aforesaid termination and said sum shall be paid to KOEPPEL from the aforesaid $10,000 held in CARVER.

5. Any sum remaining thereafter in said account in CARVER shall be free of any of the restrictions in this agreement and RACHLIN is thereby released from any further obligation hereunder.

6. It is understood that RACHLIN is liable only to the extent of the ten thousand dollars held in CARVER. If for any reason whatsoever KOEPPEL claims more than ten thousand dollars is owing to it as set forth in paragraphs 3 and 4 above it cannot look to RACHLIN for any such excess.

7. In the event any dispute between CORE and KOEPPEL as to the terms of this agreement or their application, either of those said parties may demand arbitration of such dispute. In such event Bernard Samuels, Esq. and Carl Rachlin shall be the arbitrators and shall select a third party. All parties agree to be bound by a majority decision of said arbitration. An order or judgment may be entered by any party incorporating the results of any such arbitration.

The parties hereunto set their hands and seals this 31st day of January, 1966.

Carl Rachlin

CARL RACHLIN,
Escrowee

E. KOEPPEL LEASING COMPANY, INC.
by: ____________________

CONGRESS OF RACIAL EQUALITY, INC.
by: ____________________

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CORE VS. MINNESOTA DAILY 1965-

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a national organization with affiliated local groups working

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CORE
RACIAL EQUALITY

to abolish racial discrimination by direct, nonviolent methods

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nb
CORE v
Minnesota
Daily

Rachlin

November 1, 1965

Editor
MINNESOTA DAILY
10 Murphy Hall
University of Minnesota
Minneapolis, Minnesota 55455

Dear Sir:

I have received, today, copies of the article by one Howard Kaibel in the MINNESOTA DAILY of October 28th and 29th. As these contain inaccurate and errors concerning CORE's position and in fact amount to little less than slander of CORE, I respectively request the opportunity of presenting CORE's responses to them. I believe it only fair that we receive equal space with equal prominence to do so.

I am presently contacting our Southern Regional Director Mr. Richard Haley, to whom there is some reference in the articles for his comments. Upon receipt of your acknowledgement of this letter, I will send to you copy containting CORE's response.

Sincerely yours,

Alan Gartner

Alan Gartner
Director,
Community Relations

AG/rwb

cc: Professor Arnold M. Rose
Richard Haley

Minnesota Daily 10/28/65 p.4

enclosed,

Deacons show trend to violence in CORE

By Howard Kaibel

(This is the first of two articles.)

An unarmed man is demonstrating his feelings on an American street. The legal authorities are standing less than twenty feet away. Suddenly an observer decides to take the law into his own hands. He slides over in the car seat, pulls out a pistol and shoots the defenseless protestor twice.

"Unconscionable attack of a senseless, ugly, immoral Segregationist!" you say? Don't jump to conclusions. Unbelievable as it may sound, the man shot was a Southern white and the despicable assailant was a negro chaperoning a civil rights picket line sponsored by CORE (the Congress of Racial Equality).

That night, a speaker at the Negro rally said—not we will go to the hospital and pray for the man—but, "That man deserved it, he had no right being here . . . came all the way from Pearl River."

These less than amusing incidents are part of a definitive trend within CORE away from non-violence and towards "the judicious use of violence."

The nature and direction of CORE's mephitic metamorphosis was early evidence at the summer training session in Waveland, Mississippi. A staff member summed it up with sanctified semantics, "We are a Movement, and because we are a force for change, our principles must also change." Throughout the entire five-day session not a minute and a half was spent on the theory, power, value or necessity of non-violence.

At the same time, exceptional stress was placed on the theory, power, value and necessity of "judicious violence."

The focus of discussion was "The Deacons for Defense and Justice." The Deacons for Defense is a paramilitary vigilante organization whose main purpose according to Charles Simms, the head of the Bogalusa chapter, is "to combat the Ku Klux Klan or white supremacy groups." As the title indicates, they are supposedly a defense group. Actually Earnest Thomas (otherwise known as "Chilly Willy," the representative at the Waveland session, indicated that "defense" is a term that can be stretched (as countries often use it in foreign policy). He said it could be strained to cover retalitory action, such as burning a white house for every Negro house charcoaled.

In the incident described above "defense" has been stretched to include shooting unarmed antagonists. The group is equipped with two-way car radios, walkie-talkies, automatic pistols, and high powered rifles. It operates under a quasi-military discipline while its membership and source of funds is secret. While no time at the conference was spent on non-violence, a Deacon at the conference the whole five days was impressing people with his calibered courage. He spoke for half an hour at a general meeting, no one on staff answered him.

The precise relationship between CORE and the Deacons is unclear, yet clear enough to be frightening. The head of the Southern Regional Office submitted an ambivalent memorandum saying only two concrete things:

- "There is some question as to the present viability of non-violent philosophy in the everyday thinking of CORE staff."
- "Thus I view it a necessary part of CORE policy that we cooperate with the Deacons as a civic group and, when necessary as a protective agency."

In a particular project in Bogalusa, CORE brought the Deacons down from Jonesboro to organize a Bogalusa chapter in April. Armed Deacons rode in CORE cars, chaperoned CORE demonstrations, and acted as the personal bodyguards of James Farmer, CORE President, when he visited there.

(Continued on Page 5)

Deacons . . .

(Continued from Page 4)

UPI writer Edward Cocke reported from Bogalusa July 12 that, "Here at least, it is believed Deacons get their operating funds from CORE which raises money through public subscription."

The Conference and the Deacons are just two indications of the trend within CORE towards violence. The reasons for the change, however, are not very clear and it seems that might be because the reasons for preferring non-violence haven't changed .

(Tomorrow's article will explore the reasons for subscribing to a code of non-violence.)

(Howard Kaibel is the vice president of MSA and worked for CORE in Louisiana last summer.)

Minn. ~~Daily~~ 10/29/65 p. 4

Because of violence

Do not contribute to CORE!

By Howard Kaibel

(This is the second of two articles.)

It seems clear that the Congress of Racial Equality (CORE) is accepting or, at least, tolerating a shift in philosophy to the "judicious use of violence." Both the spring training conference and the relationship with the "Deacons" clearly indicate this trend. It seems we should re-evaluate the reasons the civil rights movement follows non-violence and see whether there has been change enough in these premises to justify a change in principle.

The first, and least popular reason for non-violence has always been the moral one. An eye for an eye is never preferable to transcending violence (and it won't ever become moral to shoot an unarmed man). The practical side of this morality is that nonviolence consecrates the movement. Civil Rights Workers are not just a grubby anarchist minority fighting for their own selfish interests, another Harlem or Los Angeles. Instead, they have the moral force of an outraged nation whose president articulates the consensus, "We Shall Overcome!"

The second reason commonly stated for maintaining non-violence is to prevent the escalation of violence. As one of the Deacons indicated it is very easy to go from defense to retaliation and from retaliation to shooting the defenseless. This danger hasn't changed, and protests to the contrary notwithstanding, human self restraint is hardly adequate insurance of the "judicious use of violence."

A third problem people in CORE seem to refuse to face is where things are heading. What can be the result of resorting to violence? When people start shooting back and burning houses in retaliation, there are only two likely results. The first is unrealistic: that is the historic result—in short, a bloodbath. Instead of an occasional shot by an ugly minority, Negro armed resistance has always been met with irate slaughter.

This, however, is not the likely end. The almost inevitable result will be federal intervention. Federal troops will likely be sent in to silence both sides. Does this sound familiar? Perhaps it reminds you of Reconstruction. When federal troops are pulled out we will be back where we started, without organized Negro communities, with a hostile white power structure, and with twice as much hate. When this movement began we all realized that you don't change peoples minds by sending in troops—CORE seems to have forgotten.

A fourth reason CORE forced itself to be nonviolent (sometimes to the point of death) was sensitivity about the communities we entered. We didn't carry guns and we didn't ask for or allow Armed Protection, because we were not members of the communities. The people have a duty to protect themselves and whites can understand. We are outsiders, troublemakers (proud of it) and a foreign threat to the white community. CORE once recognized that there was already unpalatable trouble for Negroes in every community. It realized that coming in brought more trouble, and it never would have stooped to exposing the community to additional violence (even when individual members volunteered). CORE used to come into a community at great personal risk to help. Now they come in to unnecessarily increase violence and death.

A fifth very simple practical reason for nonviolence was political reality. We are in a Southern society where everything is against us. The Sheriffs, the police, the courts, the juries, everything to the point of an occasional ready-made lying witness is against us.

No civil rights murderer has ever been convicted. CORE has done a lot of good in the South, but can it expect justice in Louisiana? Or is there at least an equal chance that it and local co-workers could expect to be hunted down for promoting armed insurrection?

Some are forgetting the difference between Los Angeles and Selma. Some are exposing innocent people to unnecessary violence. Some are promoting revenge rather than understanding. Some are inviting bloodshed, or another Reconstruction, or both. I prefer Selma, understanding and genuine change. It seems to me that a beautiful nonviolent movement has a dangerous rotten apple.

The solution to me is to excise CORE — to destroy its influence before it destroys our cause. CORE is (understandably) close to bankruptcy and if we can convince the public to stop contributing, it will

(Continued on Page 5)

Contribute...

(Continued from Page 4)

have to fold up. I don't mean to stop raising funds. Instead, this is a time to redouble our efforts. SCLC (the Southern Christian Leadership Conference) and SNCC (the Student Nonviolent Coordinating Committee) are struggling for genuine non-violence. With added funds they could extend their influence to the places CORE will have to vacate. That is, the places where non-violence is needed most.

(Howard Kaibel is the vice president of MSA and worked for CORE in Louisiana last summer.)